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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

15 Cr. 861(JMF)

5 ROBERT OLINS,

6 Defendant.

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7 December 21, 2016

8 9:40 a.m.

9 Before:

10 HON. JESSE M. FURMAN,

11 District Judge

12
13 APPEARANCES

14 PREET BHARARA

15 United States Attorney for the
Southern District of New York

16 BY: CHRISTINE I. MAGDO

ANDREA M. GRISWOLD

17 Assistant United States Attorneys

18 DOAR, RIECK, KALEY & MACK

19 Attorney for Defendant

20 BY: JAMES R. DeVITA

21 LAW OFFICE OF ANTHONY CECUTTI

Attorney for Defendant

22 BY: ANTHONY CECUTTI

23
24 ALSO PRESENT:

25 HOLLY MEISTER, U.S. Attorney's Office

VIRGINIA FAUGHNAN, U.S. Postal Service

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1 (Hearing resumed)

2 THE COURT: You may be seated. Good morning. Welcome
3 back.

4 Mr. Neville, if you want to take the stand, that would
5 be great.

6 Are you ready to proceed?

7 MR. DeVITA: Yes, your Honor. If I may have one
8 moment.

9 I will just inform Mr. Neville's counsel that I
10 believe I was somewhat unduly optimistic in predicting a half
11 hour to an hour. It's more like an hour and a half.

12 THE COURT: Okay.

13 A VOICE: Do I get to object, your Honor?

14 THE COURT: No.

15 Are you able to tell me at this point if Mr. Olins is
16 likely to testify?

17 MR. DeVITA: Unlikely, your Honor.

18 THE COURT: Unlikely?

19 MR. DeVITA: Unlikely.

20 THE COURT: All right. Why don't we get started so
21 that we can get finished.

22 MR. DeVITA: Yes, your Honor. I am having trouble
23 locating one item.

24 (Pause)

25 MR. DeVITA: Ah, I found it.

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Neville - Cross

1 MICHAEL HENRY GARTSIDE NEVILLE, previously sworn.

2 CROSS EXAMINATION (continued)

3 BY MR. DeVITA:

4 Q. Good morning, Mr. Neville.

5 A. Good morning.

6 THE COURT: Let me remind Mr. Neville that he is under
7 oath, and now you can proceed.

8 MR. DeVITA: Thank you, your Honor.

9 BY MR. DeVITA:

10 Q. When we left off yesterday, we were still talking about the
11 events leading to the transaction involving the Sevres globes.
12 Do you recall that?

13 A. Sevres vases.

14 Q. Sevres vases, yes. We will come to the globes in a few
15 minutes.

16 Do you recall telling the government on two different
17 occasions that you had a telephone call on March 28 with
18 Mr. Olins and Mr. Rusco in which they gave you -- Mr. Rusco
19 gave you permission or told you that Mallett could have the
20 vases for \$540,000.

21 Do you recall that?

22 A. I do recall a telephone conversation. I cannot confirm
23 whether it was both Mr. Rusco and Mr. Olins or just one of
24 those two parties.

25 Q. But do you recall telling the government that that phone

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Neville - Cross

1 call occurred on March 28, 2012, and you knew that because you
2 had an entry in your diary?

3 A. That was the reason, yes.

4 Q. Let me show you -- you told them both on October 15, 2015,
5 and November 9, 2015, is that right?

6 A. I believe so, yes.

7 Q. Let me show you the entry in your diary, which is marked as
8 Exhibit 3501-13. I don't think you have that there with you
9 yet.

10 Do you see that?

11 A. Yes.

12 Q. Is that the entry you are referring to where, at the top of
13 the page, it says, "RAO/Greg call"?

14 A. Yes.

15 Q. And it is not next to any time frame, right?

16 A. No.

17 Q. So is it not correct that that was a reminder to yourself
18 to call Mr. Rusco or Mr. Olins on that date?

19 A. It may be, yes.

20 Q. And as we were looking at yesterday, Defendant's Exhibit X
21 was an e-mail from Sarah Sperling, but with your name as the
22 signature.

23 Oh, you have it?

24 A. I have it.

25 Q. Perfect.

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Neville - Cross

1 That's the e-mail asking for the signed consignment
2 agreement, right?

3 A. Correct.

4 Q. Isn't it a fact that the call that you were going to make
5 the next day was a follow-up to try and get that signed
6 consignment agreement?

7 A. I don't think it is a fact, no. I wouldn't -- I don't
8 remember that precisely.

9 Q. Let me show you what I am marking as Defendant's Exhibit
10 Y.

11 MR. DeVITA: Today I do have the tags, your Honor, so
12 that may expedite or help matters a little bit, although I do
13 have to put them on as I go because I didn't want to have to
14 recopy everything last night.

15 A. Thank you.

16 Q. Now, Mr. Neville, that's an e-mail between yourself -- an
17 e-mail chain between yourself and Mr. Olins on March 28, 2012,
18 is that right?

19 A. Yes.

20 Q. And then it says -- it starts out with, on the 28th,
21 "Please see attached our consignment agreement, which I would
22 like to have signed by you or Greg as appropriate. I did
23 e-mail Greg to sign a copy signed by me yesterday."

24 Do you see that?

25 A. I do.

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Neville - Cross

1 Q. And then it says, "Unfortunately" and then Mr. Olins
2 responds, "I do not currently have access to a printer;
3 however, I do confirm that the attached consignment agreement
4 was in full force and effect throughout the term," right?

5 A. Yes.

6 Q. And then you ask, on March 28 -- I mean your next response
7 is at 12:34 p.m. "Thank you very much for this. I wonder if I
8 might have a moment any time during your brief stay in New York
9 to drop in for a quick conversation in order to clarify some of
10 the financials on your pieces before you return to Spain."

11 A. Yes.

12 Q. And then Mr. Olins responds, "Unfortunately I am in
13 Connecticut and I depart tomorrow. I will call you Friday."
14 Correct?

15 A. Correct.

16 Q. And then you say you'll miss -- "I will miss coffee in
17 Manhattan. I am happy to have coffee in Connecticut if it is
18 anywhere near Greenwich. Unfortunately, I am away on Friday
19 but would love it if you had a moment either today or tomorrow
20 for a catch-up, even on the telephone."

21 And then Mr. Olins responds, "Will do tomorrow."

22 A. Yes.

23 Q. So does that refresh your recollection that the reason you
24 were -- you left a note for yourself to get in touch with
25 Mr. Rusco or Mr. Olins was to get the signature on the

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Neville - Cross

1 consignment agreement?

2 A. It may be. I don't recollect clearly this, but it may be.

3 Q. And it clearly shows you did not speak to Mr. Olins on
4 March 28.

5 A. That is true.

6 Q. And to the best of your recollection, you don't have any
7 recollection of speaking to -- now, after having gone through
8 that -- with Mr. Rusco on the 28th, do you?

9 A. No.

10 Q. So when you said to the government that you were certain
11 that you had spoken to them because it was in your diary, you
12 were wrong?

13 A. No. I was certain that I had spoke to either Mr. Olins
14 and/or Mr. Rusco late in March or early April about the
15 possibility -- about the agreement to buy the vases at
16 \$540,000, but that we would have to wait for a written
17 agreement.

18 Q. And you didn't get the written agreement?

19 A. I did not get the written agreement, no, we did not, until
20 in later in the summer.

21 Q. When the court approved that.

22 A. Correct.

23 Q. After you had already sold them.

24 A. Correct.

25 Q. And the sale of the vases occurred within days of that

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Neville - Cross

1 March 28 set of e-mails, correct?

2 A. Correct.

3 Q. In fact, it occurred on April 3, isn't that right?

4 A. I need to refresh myself of the actual date, but it was
5 early in April, yes.

6 Q. Let me show you what I am marking as Defendant's Exhibit
7 Z.

8 A. Thank you.

9 Q. That is an internal e-mail generated at Mallett reflecting
10 the sale of the vases on April 3 at 800,000 pounds, isn't that
11 right?

12 A. Correct.

13 Q. And you certainly didn't tell Mr. Rusco in March, April,
14 May, or June that it had sold -- that those vases had sold for
15 800,000 pounds, right?

16 A. No.

17 Q. Now, let me ask you to look, if you would, at Government
18 Exhibit 105.

19 Do you have that exhibit book with you there?

20 A. Yes, I do, sir.

21 Q. Now, that is a series of e-mails starting with an e-mail on
22 April 11, 2012, from someone named Khalil Ishaq. If you look
23 at the page, it has the number 2774.

24 Do you see that?

25 A. Correct.

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Neville - Cross

1 Q. Who is Mr. Ishaq?

2 A. The accountant in the finance department of Mallett in
3 London.

4 Q. And that reflects the receipt of 844,994 pounds.

5 A. Yes.

6 Q. Do you know why it is 844,994 instead of 800,000 even?

7 A. No.

8 Q. But this does relate to the sale of the vases, isn't that
9 right?

10 A. I believe so, yes.

11 Q. And let me ask you to look at the next page, which is an
12 April 11 e-mail from Mr. Smyth Osbourne, who is your direct
13 superior, right?

14 A. Yes.

15 Q. And that's to you, and it says, "I guess we can now go into
16 bat with Olins' bank and Olins about how much we have to pay to
17 the bank and how much we keep to pay off Olins' debtor on the
18 wall lights, plus how much we need to give Glenn Randall."

19 Then it says, "Please note there will be" -- "that we
20 need to pay 40,000 pounds, five percent import duty, so there
21 will be 760,000 pounds to distribute," right?

22 A. Correct.

23 Q. And you respond immediately, within -- well, within a few
24 hours -- he is in London, you are in New York, right?

25 A. Yes.

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Neville - Cross

1 Q. And then you say, "Yes, indeed. Thanks for all of this. I
2 am led to believe that there is a resolution agreed upon with
3 the SEC that should be signed next week. I will wait until all
4 the air is cleared and then make a proposal."

5 A. Yes.

6 Q. You didn't tell your superior that you already had an
7 agreement with the bank that they would accept \$540,000 as a
8 total, did you?

9 A. Yes, I did.

10 Q. Not in that e-mail, is it?

11 A. No. I telephoned them, both Mr. Smyth Osbourne and
12 Mr. Cave, to say that we had a verbal agreement of \$540,000.

13 Q. You have no record of that?

14 A. I have no record of that telephone call, no.

15 Q. And was that call before or after this e-mail?

16 A. That was before this e-mail.

17 Q. So before the e-mail -- so it was before his e-mail?

18 A. It was before his e-mail.

19 Q. So before his e-mail, you had already told him that you had
20 an agreement with the bank that they were going to accept
21 \$540,000?

22 A. A verbal agreement, yes.

23 Q. And yet he said -- you had e-mail saying that he wanted you
24 to go into bat -- that's a cricket term, correct?

25 A. Correct.

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Neville - Cross

1 Q. Not baseball.

2 A. No, sir.

3 Q. But similar.

4 A. Yes.

5 Q. He wanted you to go into bat to get Mr. Olins to agree on a
6 distribution, right?

7 A. Yes.

8 Q. Meaning he knew you didn't have an agreement with
9 Mr. Olins, right?

10 A. We did have an agreement, but it was not in writing, and we
11 had to wait for the written agreement. I had made that clear
12 to the London office.

13 Q. But he is saying to you in this e-mail, Go get an
14 agreement, isn't he?

15 A. Yes.

16 Q. And he is saying to go get an agreement with the bank.

17 A. Yes.

18 Q. And you did not say in your e-mail responding to that,
19 Well, Michael, you know we already have an agreement. I have
20 hit the ball out of the park.

21 A. I did not say that in this e-mail, no.

22 Q. Now, you testified that you had already had your discussion
23 with Mr. Olins about applying part of the funds to the debt on
24 the wall brackets prior to the time the court authorized the
25 sale of the vases, is that right?

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Neville - Cross

1 A. Yes.

2 Q. Do you remember telling the government, the F.B.I. agents,
3 and these prosecutors, on May 12, 2016, quote -- let me hand to
4 you Exhibit 3501-9.

5 Do you have that up there with you?

6 A. Sorry, sir. Could you repeat? 35?

7 Q. 3501-9. Do you have the 3500 material up here?

8 Here it is. I'm sorry. It is in this book. Bear
9 with me a moment.

10 A. Sir.

11 Q. Here we are. Okay. And I am going to draw your attention
12 to this paragraph right there. This is on the first page, next
13 to the last paragraph, 3501-9.

14 This is, by the way, on May 12, 2016, this is before
15 Mr. Olins pled guilty. You were preparing for your testimony
16 at trial, right?

17 A. Yes, sir.

18 Q. And you said to the government, "With regards to the vases,
19 Neville called Olins after he received court approval to
20 purchase the vases for \$540,000. Neville told Olins 460,000
21 would be credited to Olins' debt from the subsequent sale of
22 the vases. Olins did not agree to all of the 460,000 going to
23 pay down his debt. Olins originally wanted 210 cash out of the
24 460,000. Neville agreed to pay Olins 160,000 in cash out of
25 the 460. Olins stated that the 160,000 was going to be used to

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Neville - Cross

1 pay down a down payment or a deposit for an apartment in
2 Spain."

3 Do you recall saying that to the agents?

4 A. Yes.

5 Q. So you told the agents on May 16, and the government, these
6 attorneys, on May 12, 2016, that that call occurred after you
7 got court approval for the sale at 540, right?

8 A. Yes.

9 Q. And the court approval came on June 15, 2012, isn't that
10 right?

11 A. I believe so.

12 Q. And then let me show you what I am marking as Defendant's
13 Exhibit AA. This is a June 17, 2012, e-mail. This is from
14 Mr. Olins, even though it says "from mail," right? Mr. Olins
15 to you?

16 A. I believe it was.

17 Q. So it is June 17, he says to you, "I would be most
18 appreciative if this transaction can be completed today from
19 your London office in the amounts indicated below. The larger
20 balance should be applied to the purchase which has been
21 discussed for some time." "The purchase" being the wall
22 brackets, right?

23 A. Yes.

24 Q. And this, at the time of this transmission is 23:32:16.
25 It's almost midnight, right?

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Neville - Cross

1 A. Yes.

2 Q. So does that refresh your recollection that the
3 conversation you had with Mr. Olins, where the discussion was
4 money was going to be applied to his debt, was on June 17,
5 2012.

6 A. It may have been. It may have been --

7 Q. And it -- sorry. Had you finished your answer?

8 A. I will leave it as it may have been, yes.

9 Q. At that point the 210,000 is still what he is requesting,
10 and your decision only to give him 160,000 in cash was after
11 this, right? Because the amount that's reflected in the e-mail
12 of cash is 210,000.

13 A. Correct.

14 Q. Now, you never told Mr. Olins that the vases had actually
15 sold for a million three, did you?

16 A. Not before the court approval, no.

17 Q. Well, even after court approval, didn't you tell him that
18 it had sold for a million?

19 A. No. I said it sold for -- we had a million to distribute
20 between the bank and him. The bank had agreed 540, so that we
21 could give him 460.

22 Q. Leaving Mallett 300,000?

23 A. Correct.

24 Q. But you told him that it sold for a million.

25 A. I believe I would have said very clearly to him that it

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Neville - Cross

1 would have been sold so that we had our commission and that we
2 had a million to distribute.

3 Q. Let me show you what I am marking as Defendant's Exhibit
4 BB --

5 A. Thank you.

6 Q. -- and ask you, the top of those is an e-mail from
7 Mr. Olins to you, is that correct? Actually, it is an e-mail
8 and a response, is that right?

9 A. Yes.

10 Q. And the second page -- the first one is dated November 8,
11 2013, and then the second page is an e-mail exchange, November
12 10 and then November 11, is that right?

13 A. Yes.

14 Q. There is a reference in there, it says -- asks you would
15 you be available to speak to, at your convenience, two
16 associates who would like to get an understanding of the real
17 values of the pieces in my collection, and you say, that's
18 fine, you will be happy to talk to them, right?

19 A. Yes.

20 Q. And then there is a follow-up e-mail, the second page from
21 Mr. Olins, in which he is telling you, I hope you had a nice
22 weekend. He mentioned a person named Bhavin Shah. Do you
23 remember that?

24 A. I do recall that name.

25 Q. And Mr. Shah was somebody that was interested in purchasing

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Neville - Cross

1 items from the collection, right?

2 A. Correct.

3 Q. And the purpose of this e-mail from Mr. Olins to you is to
4 prepare you for a conversation with them, to impress them on
5 how well the items sold by you and Mallett sold, isn't that
6 right?

7 A. I believe so.

8 Q. And if you look at item four --

9 A. Yes.

10 Q. -- it says, "Christie's estimates versus what Mallett has
11 been able to net to the bank thus far."

12 Do you see that?

13 A. I do.

14 Q. And then it shows for the Sevres garnitures, IC --

15 A. Yes.

16 Q. -- 600,000 to 900,000. That's the amount that Christie's
17 had estimated, correct?

18 A. I believe so.

19 Q. Versus the 1 million, which is what you had told him they
20 sold for?

21 A. That is what we were able to net for the bank and Mr. Olins
22 combined, yes.

23 Q. Without reference to the extra 300 million that you didn't
24 tell Mr. Olins about.

25 A. 300,000.

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Neville - Cross

1 Q. 300,000. I'm sorry.

2 A. All of the figures that are on this note number four are, I
3 believe, figures that were net to the bank and did not include
4 Mallett's commission.

5 Q. Well, even at a million dollars, 300,000 is a lot more than
6 20 percent, isn't it?

7 A. We took our 20 percent from the gross figure, which was
8 1.3. 20 percent of 1.3, less, I believe, the import duty,
9 about which I am not entirely certain of the sum, would be
10 around the million-dollar mark.

11 Q. But you didn't tell him that they had sold for a million
12 three.

13 A. I don't remember so doing.

14 Q. The government asked you to look at Government Exhibit 108.
15 Do you have that binder with you?

16 A. Yes, indeed.

17 Q. Ms. Griswold showed you that yesterday and asked if you had
18 witnessed that being signed, is that right?

19 A. Yes, indeed.

20 Q. And you said yes?

21 A. Yes, I did.

22 Q. And it is dated June 24, 2013?

23 A. Yes.

24 Q. 2013, right?

25 A. Correct.

Gcl2olil

Neville - Cross

1 Q. I'm sorry, it is July 24.

2 A. July.

3 Q. July 24. That's over a year after the transaction, is that
4 right?

5 A. That is correct.

6 Q. And isn't it a fact that you had been trying to get
7 Mr. Olins to provide some kind of documentation for this for
8 that entire year?

9 A. The accounts department wished to have some kind of
10 documentation from Mr. Olins, and I had been asked to get it,
11 yes.

12 Q. So the accounts department had been pressuring you, and you
13 had been pressuring Mr. Olins, is that right?

14 A. I had asked Mr. Olins on a number of occasions, I believe,
15 yes.

16 Q. Let me show you what we are marking as Defendant's Exhibit
17 CC. Do you recognize that, Mr. Neville?

18 A. No, I do not.

19 Q. Well, if you look at the first one, it is an e-mail from
20 you to Michael --

21 A. I have it, sorry.

22 Q. Starting on 3155 and over to 3156.

23 That's an e-mail from you to Mr. Osbourne Smyth, is
24 that right? I'm sorry, Smyth Osbourne.

25 A. Yes.

Gcl2olil

Neville - Cross

1 Q. It says, "Please see attached, and I hope this will be
2 sufficient. Robert is apparently coming in this week.
3 Sometimes even pigs fly."

4 A. Yes.

5 Q. Is that to reflect the extent to which you had been working
6 to try and get him to sign this document?

7 A. I wouldn't say it was necessarily that, but Robert didn't
8 often come in.

9 Q. And if you look over on page 3154, there is an e-mail from
10 Mr. Ishaq saying, All we are missing now is a 460,000 invoice
11 for the balance of the vases.

12 Do you see that?

13 A. Yes.

14 Q. And then you respond "hence the reference from Henry" --
15 I'm sorry, that's Mr. Smyth Osbourne responding, saying "Robert
16 is coming in this week," being Robert Olins, "to get him to
17 sign an invoice for just that, let's hope."

18 A. Yes.

19 Q. And that is what resulted in Exhibit 108.

20 A. I believe so.

21 Q. It was not a contemporaneous document where the transaction
22 occurred a year later.

23 A. Could you rephrase that question or repeat it?

24 Q. I said, the invoice or the letter that was signed by
25 Mr. Olins took place a year after the transaction.

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Neville - Cross

1 A. Yes, it did.

2 Q. Now, you had testified on direct examination about a
3 transaction involving certain Swedish globes. Do you recall
4 that?

5 A. Yes.

6 Q. I believe you testified that you lied to Mr. Rusco about
7 that, those globes, as well?

8 A. Yes, I did.

9 Q. And you lied to Mr. Olins about them, right?

10 A. I may have done.

11 Q. You know you did, didn't you?

12 A. I may have done. I don't remember, but I know I lied to
13 Mr. Rusco.

14 Q. We looked at Government Exhibit 105 the other day. Do you
15 have that?

16 A. Yes, I do.

17 Q. If you look at the second page of that, this is the same
18 series of e-mails. It has the reference to you going into bat,
19 right?

20 A. Yes.

21 Q. It also has some discussion of the globes?

22 A. Yes.

23 Q. And it reflects in an April 11 e-mail from Mr. Ishaq --
24 that is the first page over on to the second page -- a
25 calculation reflecting an import duty for those globes, right?

Gcl20111

Neville - Cross

1 A. Correct.

2 Q. And it indicates that the globes were sold for 310,000
3 euros, right?

4 A. Yes.

5 Q. But that the money had already been received and it was
6 258,262 pounds?

7 A. Yes.

8 Q. That's well over 400,000, isn't that right?

9 A. I don't know at that present exchange rate, no.

10 Q. In one of your -- do you have Exhibit J, Defendant's
11 Exhibit J.

12 (Pause)

13 Q. The exhibit is on the screen, Mr. Neville, if you don't
14 have it.

15 A. Oh, right. Thank you.

16 Q. Do you see that?

17 A. Yes, I do.

18 Q. In that, you referred to an exchange rate, dollars to
19 pounds, of \$1.56 to the pound, is that right?

20 A. I see that, yes.

21 Q. That is sometime after this, but it is approximately the
22 same time frame, isn't it?

23 A. I understand that, yes.

24 Q. So at \$1.56 to the pound --

25 MR. DeVITA: Actually I also have that. We can

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Neville - Cross

1 mark -- I'm not sure if I should offer this as an exhibit, if
2 your Honor wants to take judicial notice. I have an online
3 currency exchange rate. Should I mark it as an exhibit?

4 THE COURT: I don't know what you want to do with it
5 or what you would want me to take note of.

6 MR. DeVITA: It's an exchange rate for -- an online
7 service that provides exchange rates as of a date.

8 THE COURT: All right. I am happy to take judicial
9 notice of it, if both parties agree that it is in fact
10 accurate.

11 MS. GRISWOLD: We have no problem with that.
12 Mr. DeVita sent this to us before --

13 THE COURT: Ms. Griswold, you have to use the
14 microphone.

15 MS. GRISWOLD: Sorry, your Honor.

16 BY MR. DeVITA:

17 Q. I have handed you a currency printout for an online service
18 which reflects that the currency, the 310 pounds that, on the
19 date reflected in the e-mail, which I believe should be on here
20 somewhere --

21 THE COURT: March 19, 2012.

22 Q. -- March 19, 2012, is 310 euros translates to \$408,286, is
23 that right?

24 A. Yes.

25 Q. Now, do you still have the government exhibits there?

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Neville - Cross

1 A. Yes.

2 Q. Could you turn to Government Exhibit 201.

3 If you turn to page 5, which is an entry in
4 Mr. Rusco's diary of June 18, 2012 --

5 A. Yes.

6 Q. -- it says that you called him on June 18 to let him know
7 the items Mallett would be taking to the show next week at The
8 Masterpiece, correct?

9 A. Correct.

10 Q. And in that conversation you told him that you were going
11 to be taking the globes.

12 A. Yes.

13 Q. And in fact you had already sold the globes at the
14 Maastricht fair?

15 A. Yes.

16 Q. And, then, if you turn to page 6, and the entry for June
17 29, 2012, it says that you reported that you had an interested
18 buyer in the globes and that the client has asked to see -- oh,
19 the client asked to see the dragons, but you told Mr. Rusco on
20 June 29 that you had an interested buyer.

21 A. Yes.

22 Q. And that was a lie.

23 A. Yes.

24 Q. Because you had already sold them.

25 A. Yes.

Gcl20111

Neville - Cross

1 Q. And then on June 5, that's on page 7, July 5, I'm sorry,
2 July 5, Mr. Rusco called you, and you confirmed the sale of the
3 globes, which had already taken place some time ago, isn't that
4 right?

5 A. Correct.

6 Q. Then we just saw Exhibit J saying that you had, on July
7 5 --

8 MR. DeVITA: If we could have that up again.

9 Q. It is on the screen, Defendant's Exhibit J. It says, "The
10 sum of money owed to the bank will be \$210,000, representing
11 \$10,000 more than the agreed return, which you kindly
12 communicated before the opening of Masterpiece."

13 A. Yes.

14 Q. Now, isn't it a fact that, before the opening of
15 Masterpiece, you had negotiated with Mr. Rusco to reduce the
16 price that he would accept for the globes?

17 A. I discussed it with him, yes.

18 Q. And he agreed to take a lower return than you had discussed
19 previously.

20 A. Correct.

21 Q. And this negotiation took place after you had already sold
22 the globes for -- or Mallett had already sold the globes for
23 310,000 euros?

24 A. That's correct.

25 Q. So knowing you had sold them for far more than even the

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1 price that existed before this negotiation, you then negotiated
2 a further discount, isn't that right?

3 A. Yes.

4 Q. And you did not discuss any of this with Mr. Olins, did
5 you?

6 A. No.

7 MR. DeVITA: I am marking an exhibit, Defendant's
8 Exhibit EE.

9 MS. GRISWOLD: Is there a DD?

10 MR. DeVITA: This is EE.

11 MS. GRISWOLD: Is there a DD.

12 MR. CECUTTI: The currency converter was DD.

13 MR. DeVITA: Apparently we had a miscommunication,
14 because we wrote down the currency conversion as DD, even
15 though it was judicial notice.

16 THE COURT: All right.

17 BY MR. DeVITA:

18 Q. Let me show you EE, Mr. Neville. And this is an e-mail at
19 the bottom of the page -- well, it starts with an e-mail from
20 Mr. Rusco to you. This is on 7/17.

21 Do you see that?

22 A. Yes.

23 Q. And it is a July 6, 2012, e-mail to you.

24 It says in the third paragraph of his e-mail, "Also,
25 with regard to the Swedish globes, I received your

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1 documentation just a few minutes ago by UPS delivery. Thank
2 you for your work on the sale of this item. I will let you
3 know when the wire transfer has been received."

4 A. Yes.

5 Q. And then you responded to that, isn't that right?

6 A. I see that.

7 Q. And in that response, in the second paragraph, you say,
8 "The money for the Swedish globes has been cleared in our
9 account today."

10 A. Yes.

11 Q. That was a lie, right?

12 A. Yes.

13 Q. And you knew it was a lie.

14 A. Yes.

15 Q. And you did it deliberately to deceive Mr. Rusco?

16 A. Yes.

17 Q. And this was part of your regular business, wasn't it, to
18 deceive your clients?

19 A. No. But in this instance, I did deceive Mr. Rusco, yes.

20 Q. And then you say, "We will translate into dollars on Monday
21 and wire you from London. You should receive it by Wednesday
22 or Thursday at the latest."

23 A. Yes.

24 Q. Now, of course the money didn't have to be translated
25 because the money was sitting in Mallett's bank account, wasn't

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1 it?

2 A. In Sterling, yes.

3 Q. But it had been received, as we saw, in April.

4 A. That is true.

5 Q. And between April and July 6 you could easily have had
6 those funds translated, couldn't you?

7 A. Yes, indeed.

8 Q. Do you know when the instructions for that transfer
9 actually took place?

10 A. No, I don't remember that.

11 Q. Let me show you what I am marking as Defendant's Exhibit
12 FF.

13 THE COURT: While you do that, let me ask you,
14 Mr. Neville, just that so the record is clear, I take it that
15 Mr. Olins was not involved in the sale of the globes and your
16 deception, if I can call it that, of Mr. Rusco, is that
17 correct.

18 THE WITNESS: No, he was not.

19 THE COURT: And why did you do this?

20 THE WITNESS: Because I had forgotten to process a
21 sale at the original time, and I was very embarrassed when I
22 recognized that I had done so, and created this story around
23 the next subsequent exhibition at which I could sell these
24 globes.

25 THE COURT: Okay.

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1 BY MR. DeVITA:

2 Q. But you didn't tell Mr. Rusco the actual price that you
3 realized.

4 A. No. I mistook that price.

5 Q. I'm sorry?

6 A. I mistook the price.

7 Q. You mistook the price?

8 A. Yes. On our sales computer log from the finance department
9 in London, the sale was wrongly registered at a sale price of,
10 I believe, \$290,000, and it was that sum that I took as the
11 sales price, not remembering the correct sale price of 310,000
12 euros.

13 Q. Mr. Neville --

14 A. Yes, yes.

15 Q. -- between April and when the Masterpiece fair was, you
16 negotiated a price reduction.

17 A. Just before or just during the Masterpiece fair, yes.

18 Q. Yes.

19 And you had available to you all of the records of
20 Mallett, correct?

21 A. Yes, I did.

22 Q. And, so, in negotiating the reduced price, you are
23 telling us that you did not even check to see how much they
24 sold for?

25 A. I checked the screen entry for the sale and the sale log,

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Neville - Cross

1 and it registered \$290,000. That is the sum I took, and it was
2 wrong. I did have access to information which would have
3 corrected me, and I did not.

4 Q. Let me show you again or ask you to look again at
5 Defendant's Exhibit K.

6 A. I don't believe I have it, sir.

7 THE COURT: I think it is on the screen.

8 THE WITNESS: Oh, I'm sorry. Thank you.

9 Q. Clearly that is an internal e-mail from --

10 A. It is very clear, yes.

11 Q. And you got a copy of that?

12 A. No, I would not have done. However, I did have access to
13 information which would have shown me the correct price, and I
14 did not access that information nor did I go back through my
15 e-mails to check it.

16 Q. Well, Mr. Neville, let's go back to Government Exhibit
17 105.

18 A. Yes.

19 Q. And that is an e-mail to you at the top page from Michael
20 Smyth Osbourne in April of 2012. It says, "Sorry. You asked
21 for this last week. Here is the level of import duty payable
22 on the globes.

23 A. Correct.

24 Q. So that's an e-mail to you transmitting the earlier e-mail
25 from Mr. Ishaq, right?

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1 A. Yes.

2 Q. And the earlier e-mail from Mr. Ishaq says, "Ooops, sorry
3 about that." And then it says, "It depends" -- and this is
4 talking about the duty, level of duty on the globes.

5 A. Yes.

6 Q. "It depends on whether the invoice is raised in sterling or
7 euros"?

8 A. Yes.

9 Q. "If it is done in euros at 310 euros, then it will be
10 15,500 euros converted to Sterling at the HMRC rate," and then
11 the next one says, "If it's done in the amount we received,
12 258,262 pounds," which we agree translated to about \$408,000?

13 A. Correct.

14 Q. You received this e-mail.

15 A. Yes, I did.

16 Q. You in fact had asked for that information.

17 A. Yes, I had.

18 Q. And you are saying that between April 17 and the beginning
19 of Masterpiece you forgot?

20 A. I did not go back, as I said, and check my e-mails. I did
21 have access to this information. I did not go back and check
22 it.

23 Q. Not only did you have access to this information, you had
24 this e-mail telling you exactly what it was sold for, right?

25 A. Yes, I did.

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1 Q. And you had received it and asked for the information,
2 right?

3 A. Yes, I had.

4 Q. And between April and the beginning of June you, forgot?

5 A. Yes.

6 Q. You had forgotten that the globes had been sold for 310,000
7 euros?

8 A. Yes. And when I went to check the screen for the sales
9 price, the dollar price was listed at \$290,000, and I took that
10 as the sales price, which was incorrect.

11 Q. And you forgot the e-mail that you had received in April?

12 A. Yes, sir, and I did not go back to check it.

13 Q. Now, you understood that the letter that you sent -- or
14 that Mr. Rusco was making an application to the court for
15 approval of the prices of the items to be sold at Masterpiece,
16 right?

17 A. Yes.

18 Q. And he send you a copy of that, right?

19 A. He sent me a copy of the new prices that he had agreed,
20 yes.

21 Q. And I think we have seen that as an exhibit, didn't we?

22 You knew that he was applying to the court in order to
23 get permission for you to take the globes, which had already
24 been sold, to Masterpiece to sell, right?

25 A. Yes, sir.

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1 Q. And you are saying that you forgot that they were already
2 sold for 310 euros?

3 A. I forgot they were already sold for 310,000 euros. I knew
4 that they had already been sold.

5 Q. And you had no intention of inflating the receipts of
6 Mallett?

7 A. I did not intend deliberately to inflate the receipts of
8 Mallett, no.

9 THE COURT: At what point did you realize that there
10 was a discrepancy between the price that you reported to Rusco
11 and the price that you actually had sold them for?

12 THE WITNESS: When I got the documents from the
13 government about this case and there was a document saying that
14 we had overinvoiced -- underinvoiced the bank.

15 BY MR. DeVITA:

16 Q. Mr. Neville, I am going to ask you some questions about the
17 dragon candelabra.

18 A. Indeed.

19 Q. You knew at the time that Mr. Jaeger was going to be buying
20 them --

21 A. Yes.

22 Q. -- that they were going to be consigned to Mallett.

23 A. I was told by Mr. Rusco, yes.

24 Q. You had earlier had a transaction or possible transaction
25 for the sale -- drawing your attention, it is in 2012 and

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1 sometime in May or June of 2012, you had a possible buyer, is
2 that right?

3 A. That is correct.

4 Q. And what was the buyer prepared to pay at that point or
5 discussing?

6 A. I don't remember if we had finally agreed a price; however,
7 it was around the -- I don't know if it was around the
8 million-dollar mark, but the client couldn't get there.

9 Q. But you did tell Mr. Olins and Mr. Rusco about that
10 client?

11 A. Yes, indeed.

12 Q. Was it the same client that ultimately wound up purchasing
13 the --

14 A. Yes, it was.

15 Q. Now, do you have Exhibit N there?

16 A. I don't believe I do, sir, no.

17 MR. DeVITA: May I have a moment?

18 Q. I am going to hand you a copy of Defendant's Exhibit N.

19 A. Thank you very much.

20 Q. The sales price for the globes --

21 A. The candelabra.

22 Q. Sorry, the candelabra, thank you.

23 It took some time to accomplish that sale, is that
24 right?

25 A. Yes, it did.

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1 Q. And it involved some friction between yourself and
2 Mr. Jaeger?

3 A. That is true.

4 Q. A lot of friction?

5 A. I felt it was a lot, yes.

6 Q. And you asked Mr. Olins to be the intermediary between you
7 and Mr. Jaeger, is that right?

8 A. Yes, I did.

9 THE COURT: Mr. DeVita, just so I am not confused,
10 because, with all due respect, your handwriting isn't the best
11 I have seen --

12 MR. DeVITA: I confess, your Honor.

13 THE COURT: Is Exhibit N the November 8 --

14 MR. DeVITA: Yes.

15 THE COURT: Very good. You may proceed.

16 BY MR. DeVITA:

17 Q. The globes were sold -- I'm sorry, the dragon candelabra
18 was sold for \$800,000 cash and some property, some tables, I
19 believe it is, in return, is that correct?

20 A. Indeed.

21 Q. And of that \$800,000, \$197,000 was applied to Mr. Olins'
22 debt on the wall brackets, right?

23 A. Correct.

24 Q. And Mr. Jaeger was aware of that, wasn't he?

25 A. I believed he was, yes.

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1 Q. In fact, that was discussed in front of Mr. Jaeger, wasn't
2 it?

3 A. I believed it had been, but the actual sum of money had not
4 been disclosed, merely the idea that Mr. Olins would
5 participate in the financial sale in some way.

6 THE COURT: Hold on. Just to be clear and flesh that
7 out, was there a conversation in --

8 THE WITNESS: In Mallett.

9 THE COURT: But involving Mr. Olins and Mr. Jaeger?

10 THE WITNESS: I believed it was, yes.

11 THE COURT: And do you recall whether there was
12 discussion of what the portion going -- hold on one second --
13 what the portion going to Mr. Olins would go to, whether it
14 would go to the wall brackets or be given to him in cash or go
15 to the bank?

16 THE WITNESS: It would be given to him as part of the
17 wall brackets.

18 THE COURT: Okay.

19 BY MR. DeVITA:

20 Q. And Mr. Jaeger had come to you to talk about the wall
21 brackets at some point?

22 A. The wall -- I don't recall a conversation about the wall
23 brackets with Mr. Jaeger, no.

24 Q. But you did talk about how the money was to be used.

25 A. I believe it was discussed in front of Mr. Jaeger that it

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1 would go to reducing Mr. Olins' debt with us.

2 Q. Okay. If you look at Exhibit N --

3 A. Yes, indeed.

4 Q. -- it starts with an e-mail from you -- I'm sorry, from
5 Mr. Jaeger to you asking you when -- asking you -- thanking you
6 for all your hard work. Please wire \$603,000. Correct? Do
7 you see that?

8 A. I see that, yes.

9 Q. Does that refresh your recollection that Mr. Jaeger was
10 aware of the amount being attributed to Mr. Olins? Because he
11 knew the price was \$800,000, didn't he?

12 A. I believe he knew the price was \$800,000, indeed. Counsel,
13 if I may say, I -- we sent him an invoice for \$800,000
14 originally.

15 Q. Yes. I will come to that.

16 A. Sorry.

17 Q. If you look, it says -- he sent you paperwork about where
18 to wire the \$603,000?

19 A. Indeed, that's true, yes.

20 Q. And then on the next page, it says at the top -- his
21 November 8 e-mail to you, "Thank you. The bill of sale for the
22 dragon candelabras will be for \$603,000 for reporting purposes,
23 correct?"

24 A. Yes.

25 Q. And that was before the invoices were issued, right?

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1 A. It was before the final sale invoice was issued, yes.

2 Q. And you responded to him, yes, that is correct.

3 A. Yes.

4 Q. Meaning that the invoice would be issued for \$603,000.

5 A. Correct.

6 Q. And also, if I could draw your attention a little earlier
7 down the page or lower down the page, your November 8 e-mail of
8 12:04 p.m. it says, "The paperwork is coming in from London and
9 should be with us on Monday, and I will walk it up to 88th
10 Street as soon as we receive it here in the gallery."

11 A. Yes.

12 Q. Did you in fact walk it up to him?

13 A. I personally didn't, but I believe -- I believe I remember
14 that our driver took it up to his apartment.

15 Q. Okay.

16 MR. DeVITA: I am not sure, but I believe -- I have an
17 exhibit that I believe we marked yesterday, but just for the
18 sake of clarity, your Honor, I would like to -- because I
19 didn't have copies of it at the time -- mark again a November
20 14, 2013, document that was shown to Mr. Jaeger, I believe. I
21 will show it to your Honor.

22 (Pause)

23 MR. DeVITA: I think we may not have offered this
24 entire exhibit yesterday, your Honor, I would like to offer it
25 now as a new exhibit, Exhibit FF.

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1 BY MR. DeVITA:

2 Q. Exhibit FF, the top page of the exhibit is a letter over
3 your signature, right? There is no signature, but your
4 name --

5 A. Yes.

6 Q. -- on Mallett.

7 That reflects the purchase price or sale price, sale
8 price, of the candelabra, \$800,000, correct?

9 A. Indeed, it does, yes.

10 Q. It also refers to an additional credit of \$50,000 to be
11 used by Mr. Jaeger in the -- for a future purchase at Mallett,
12 correct?

13 A. Correct.

14 Q. And the second page of the exhibit is an actual credit note
15 for \$800,000.

16 A. Yes.

17 Q. It is dated November 14, is that right?

18 A. Correct.

19 Q. Which is several days after the e-mail that we were just
20 looking at.

21 A. Yes.

22 Q. Which was, I think, November 8.

23 So this invoice was issued after the e-mail exchange
24 with Mr. Jaeger, isn't that right?

25 A. I understand that.

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Neville - Cross

1 Q. Is that correct?

2 A. Yes. It looks correct to me.

3 Q. Did that result in some discussion?

4 A. It did.

5 Q. Let me show you a document that I am marking as GG,
6 Defendant's Exhibit GG.

7 THE COURT: While you do that, is there a reason that
8 the \$50,000 store credit is not reflected in the invoice, the
9 credit note?

10 THE WITNESS: The actual sale agreement was \$80,000,
11 sir, your Honor, but the reason 50,000 is that it wasn't at
12 that moment applied and it would have been booked when he made
13 purchases subsequently, but we wouldn't have applied it on the
14 actual credit note. We would have applied it when he came into
15 the gallery and made the purchases.

16 THE COURT: And you had some internal record of that,
17 I assume.

18 THE WITNESS: Yes. The London office should have done
19 or would have done.

20 THE COURT: Okay.

21 BY MR. DeVITA:

22 Q. But also Mr. Jaeger's e-mail, Defendant's Exhibit N,
23 specifically asks that the bill of sale be for \$603,000, thus,
24 not including the --

25 A. Correct.

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1 Q. -- credit and not including the amount of money that went
2 to --

3 A. Correct.

4 Q. -- the debt of Mr. Olins.

5 A. Correct.

6 Q. I am showing you Defendant's Exhibit GG.

7 A. Thank you.

8 Q. It is an e-mail. It starts out as an e-mail from Mr. Olins
9 to you saying, "I believe this bill of sale was done
10 incorrectly?" That's a reference to -- this is dated November
11 15, isn't that right?

12 A. I see that.

13 Q. And that is the day after the \$800,000 invoice.

14 A. I see that, yes.

15 Q. And several days after the November 8, the week after the
16 November 8 --

17 A. Correct.

18 Q. -- e-mail.

19 And you say -- so is this the first that you learned
20 that there was a problem with the invoice to Mr. Jaeger?

21 A. I believe it was, yes.

22 Q. And then you respond -- this was on the weekend, right?

23 A. Yes, I can see that from my subsequent e-mail.

24 Q. Okay. And it says that -- you respond to Mr. Olins, "If
25 Monday is all right, I am happy to talk about the possible

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Neville - Cross

1 incorrectness of the invoice then." Is that right?

2 A. Yes.

3 Q. So Mr. Olins is the one that told you about the incorrect
4 invoice.

5 A. Indeed.

6 Q. And then you arranged for the invoice to be corrected,
7 isn't that right?

8 A. I believe I did, yes.

9 THE COURT: And the correction here is to change it
10 from 800 to 603, is that right?

11 THE WITNESS: I believe that is the case, your Honor,
12 yes.

13 THE COURT: And by "correction," I mean that actually
14 is not the price that it was sold for, is that correct?

15 THE WITNESS: Which is why I issued the invoice at
16 \$800,000, correct.

17 THE COURT: And why did you agree to change it to
18 \$603,000?

19 THE WITNESS: Because, as I understood it, your Honor,
20 that was for Mr. Jaeger's reporting purposes, so that he only
21 had a record of the monies that he actually received.

22 THE COURT: Okay.

23 BY MR. DeVITA:

24 Q. Showing you Exhibit HH, Mr. Neville. Is that the corrected
25 invoice?

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1 A. That is the corrected invoice.

2 Q. And is that the correct date on which the invoice was
3 issued, November 19?

4 A. It looks like it, yes, it does.

5 Q. And this is now the invoice to Mr. Jaeger for \$603,000?

6 A. Correct.

7 Q. Let me hand you what's been marked as Exhibit II.

8 A. Thank you.

9 Q. This is a series of e-mails between Mallett and Mr. Jaeger,
10 isn't that right?

11 A. Yes.

12 Q. And the first one on page 3374 is from Ana Gutierrez Folch.
13 She is your assistant?

14 A. Yes, indeed.

15 Q. And this is on November 19 to Mr. Jaeger asking for
16 instructions on the \$603,000 wire, right?

17 A. I see that.

18 Q. And then Mr. Jaeger responds on November 19 with
19 information? I'm sorry, it's your wire instruction.

20 A. Yes.

21 Q. From redacted. Okay.

22 In any event, that refreshes or confirms the timing
23 that we are talking about --

24 A. Yes.

25 Q. -- with respect to the issuance of the invoices, does it

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Neville - Cross

1 not?

2 A. It does, indeed, yes.

3 Q. Now, I want to ask you about the transaction in which you
4 sold the candelabra.

5 A. Yes.

6 Q. Was there a dealer involved on the other side?

7 A. There was a client's agent, yes.

8 Q. By the way, let me ask you to look at Exhibit JJ, if I
9 could.

10 This is an e-mail from you to Mr. Olins, is that
11 correct?

12 A. Yes.

13 Q. And it refers to a delay in the receipt of the cash part of
14 this transaction, isn't that right?

15 A. Yes.

16 Q. And it says, "As last time with the boule chandelier, our
17 European clients have not wired the money quite as efficiently
18 as they had promised."

19 Do you see that?

20 A. I do.

21 Q. Was the person that was involved as the agent on the other
22 side of this transaction the same agent as was involved in your
23 sale of the boule chandelier?

24 A. Yes, it was.

25 Q. Who was that?

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Neville - Cross

1 A. It was a company called Gurr Johns, G-U-R-R J-O-H-N-S.

2 Q. And was there a specific person there?

3 A. Yes, there was.

4 Q. What was that person's name?

5 A. Harry Smith.

6 Q. Harry Smith?

7 A. Harry Smith.

8 Q. I am going to show you what I am marking as Defendant's
9 Exhibit II.

10 THE COURT: I think you are up to KK.

11 MR. DeVITA: I'm sorry, KK, just a natural aversion to
12 KKs.

13 THE COURT: As long as you don't have a third, I think
14 we are okay.

15 Mr. DeVita for our planning purposes, do you have an
16 estimate on your remaining cross? Among other things, we have
17 only one court reporter today, so I want to be sensitive to her
18 needs.

19 MR. DeVITA: I hope to be able to complete in a half
20 hour or 45 minutes.

21 THE COURT: All right. So why don't we take a break
22 in a couple of minutes, so when you reach a natural break
23 point, tell me.

24 MR. DeVITA: That's fine. Yes, your Honor.
25

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1 Q. This is KK. This is an e-mail between you and Mr. Smith.
2 This is the lower one, the earlier one, November 11, 2013,
3 informing him that you sorted out the issues over the \$50,000
4 with the owners of the dragon candelabra, and informing him
5 that "they have agreed to accept the credit here in the shop,
6 which at least prevents us from having to write a check,
7 although it does leave the deal feeling very skitty."

8 Do you see that?

9 A. Yes.

10 Q. And his response is, "That's good. Purchase candelabra
11 \$950,000, less pair of tables \$150,000, balance \$800,000,"
12 correct?

13 A. Yes.

14 Q. So that reflects the \$800,000 cash and the value that he
15 put on, and you agreed on, for those tables, is that right?

16 A. That is true.

17 Q. Okay.

18 THE COURT: And is this with Mr. Smith?

19 THE WITNESS: I believe it is with Mr. Smith.

20 BY MR. DeVITA:

21 Q. Did that valuation change, the valuation of those chairs,
22 I'm sorry, tables?

23 A. The tables.

24 I don't know if the tables changed in value because
25 the tables were in London. They may very well have been put in

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1 at a different price by the London team.

2 Q. Were you involved in the decision --

3 A. No, not at all.

4 Q. Not at all.

5 A. I would not have been involved of the pricing of goods in
6 London, no.

7 Q. So you had no input in the decision about how those tables
8 would be valued, is that your testimony?

9 A. I would not -- I would not have --

10 Q. I didn't ask you what you would have done. I asked you
11 what you did do.

12 A. I don't remember having any input into the valuation of the
13 tables in London.

14 Q. Let me show you what's been marked as Defendant's Exhibit
15 LL.

16 Do you recognize that series of e-mails, Mr. Neville?
17 Take your time.

18 A. I don't remember it, but I do see that it is me who wrote
19 them.

20 Q. Okay. Let's take the first e-mail. That is from
21 Mr. Smith?

22 A. Yes, Mr. --

23 Q. Party three is the purchaser of the -- the representative
24 for the purchaser of the dragons, correct?

25 A. Correct.

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1 Q. So it says, "Deal seems to me as follows: Pair candelabra
2 \$1,600,000, less discount 400,000, net 1,200,000."

3 Now, that's an increase from the 950,000 that we saw
4 on the earlier e-mail, right?

5 A. Yes, indeed.

6 Q. And it says, "Less value of tables, 400,000." Do you see
7 that?

8 A. Yes.

9 Q. And that's an increase of \$150,000 -- of \$250,000 on the
10 value of those tables, isn't that right?

11 A. Correct.

12 Q. And total of 250,000 more reflected on this transaction,
13 correct?

14 A. For the client, correct, yes.

15 Q. And then you forward that on to Mr. Smyth Osbourne, isn't
16 that right?

17 A. I see that, yes.

18 Q. And it says, "So what do you think of this? It is my
19 belief that party three" -- meaning the other Mr. Smith,
20 right?

21 A. Yes.

22 Q. -- "wants the total deal to be higher now so that he can
23 charge commission to his clients on both ends of the
24 transaction, the sale and the purchase, and his percentage,
25 thereby gaining more dollars, just as he achieved with the

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1 chandeliers deal."

2 Do you see that?

3 A. I do.

4 Q. So you are suggesting to Mr. Smyth Osbourne that you help
5 the other Mr. Smith defraud his client, correct?

6 A. No, not entirely correct. Mr. Smith was asking us to take
7 back the two tables at the price his clients paid for them,
8 which was on their records, rather than at the price we valued
9 them previously, 150.

10 Q. You testified just a moment ago you had no input on the
11 valuation of the --

12 A. I don't remember having any input on the valuation that
13 London put on the tables, no.

14 Q. But you have input right here on what the deal is going to
15 be reflected on the invoices in order to increase the dollars
16 to Mr. Smith, right?

17 A. Yes, indeed.

18 Q. By fooling his client as to the amount of the actual deal,
19 isn't that right?

20 A. I don't see it that way because the client purchased the
21 tables at 400,000, and Mr. Smith wanted the client's receipt to
22 reflect their purchase price of the tables, not their
23 present-day value of the tables.

24 Q. You have no documentation that shows what the client, his
25 client purchased those tables for, do you?

Gcl2olil

Neville - Cross

1 A. I don't, I don't in front of me, but Mallett did. We sold
2 the tables to the client.

3 Q. It says that "it is my belief that party three wants the
4 total deal to be higher now so that he can charge commission to
5 his clients on both ends of the transactions."

6 That's what you said to Mr. Smyth Osbourne, right?

7 A. It was my belief, yes.

8 Q. "The sale and the purchase at his percentage thereby
9 gaining more dollars just as he achieved with the chandelier
10 deal." Meaning --

11 A. Yes.

12 Q. -- he is getting a higher commission, right?

13 A. Yes, yes.

14 Q. And he is fooling his clients, right?

15 A. That was my belief.

16 Q. All right.

17 THE COURT: Can you explain what the \$400,000 discount
18 is reflected on page two of this?

19 THE WITNESS: All of our list prices are negotiated.
20 Nobody comes in to an antiques dealer and pays the ticket
21 price. Nearly always the discount is 20 or 30 percent from
22 that list price.

23 THE COURT: So here the candelabra list price would
24 have been 1.6 million.

25 THE WITNESS: And then we took 400,000 off.

Gcl2olil

Neville - Cross

1 THE COURT: How do you square that with the prior
2 e-mail in which the purchase says purchase candelabra 950,000?
3 It increased by 650,000 over the course of a week.

4 THE WITNESS: Well, it hasn't, if you look at the
5 tables. The cash payment is still \$800,000. Harry Smith was
6 just trying to square the equation to get to 800,000 in cash
7 for his clients, so that his clients, it looked as if his
8 clients were getting a good deal.

9 BY MR. DeVITA:

10 Q. Again, helping deceive his clients.

11 A. I don't like the word "deceive" because in many ways the
12 end result is the same. They are paying 800,000 and not -- and
13 giving us a pair of tables.

14 Q. But they are paying a higher commission to Mr. Smith?

15 A. They may have. I cannot say what they did.

16 Q. Well, that's what you said to Mr. Smyth Osbourne?

17 A. That is what I believed.

18 THE COURT: And certainly it allowed Mr. Smith to tell
19 his clients that, I got you a better deal.

20 THE WITNESS: Indeed, sir. It certainly painted a
21 better picture for Mr. Smith.

22 BY MR. DeVITA:

23 Q. And then Mr. Smyth Osbourne says to you, "That seems fine
24 to me."

25 A. Yes.

Gcl2olil

Neville - Cross

1 Q. "We then just need to be able to justify to the auditors a
2 writedown of the tables." "C" means "about"?

3 A. 100,000.

4 Q. Yes.

5 So, in other words, you have got, by overvaluing those
6 tables, you then have to convince your auditors to allow you to
7 write down the value of those so you don't have inflated assets
8 on your books.

9 A. Correct.

10 Q. In other words, manipulating the figures.

11 A. I don't see it as manipulating the figures, but yes, that
12 is true, we would write down the costs.

13 Q. Deceiving your auditors?

14 A. Not deceiving our auditors. Reflecting the true value of
15 the tables.

16 Q. Rather than the false value that you are putting in the
17 invoice?

18 A. There is a difference between a purchase price and a sales
19 price, and that reflects in these figures.

20 Q. And then you respond, "Okay. Thank you. I leave the
21 writedown to you all"?

22 A. Yes.

23 Q. Meaning you are washing your hands and let them convince
24 the auditors of this fraud, right?

25 A. As I said, I did not have input into the figures. London

Gcl2olil

Neville - Cross

1 put their stock in that.

2 Q. But you had input into the amount that was put on the
3 invoice, didn't you?

4 A. I did because that was the purchase price that the clients
5 had paid for the tables.

6 MR. DeVITA: Marking Exhibit MM.

7 THE COURT: Just a reminder to tell me when --

8 MR. DeVITA: A few more minutes, your Honor. I am
9 almost there at the breaking point.

10 BY MR. DeVITA:

11 Q. Exhibit MM is an internally generated document reflecting
12 the actual invoice that was issued in connection with the sale
13 of the dragon candelabra?

14 A. Yes.

15 Q. And it shows that the invoice was in the amount of
16 \$1,200,000?

17 A. Yes.

18 Q. And it shows that the value of the side tables taken in
19 trade was inflated to \$400,000?

20 A. It was \$400,000, yes.

21 Q. Well, that's inflated from the 150 that he originally said,
22 right?

23 A. Correct.

24 Q. When you made your agreement with the government, did they
25 ask you to tell them about every wrongful fact that you had

Gcl2olil

Neville - Cross

1 done while you were at Mallett?

2 A. I don't remember that question.

3 Q. Well, did they tell you it was important that you tell them
4 about everything you have done?

5 A. They told me it was important to tell the truth, yes.

6 Q. And not to hold anything back.

7 A. I hope I haven't.

8 Q. They told you it was important not to hold anything back,
9 correct?

10 A. I don't remember that exact question, sir.

11 Q. Well, they asked you a lot about the transaction on the
12 dragon candelabra, didn't they?

13 A. Yes, they did.

14 Q. Did you tell them about manipulating the estimate or the
15 value of those tables in order to get a bigger commission for
16 Harry Smith?

17 A. I told them about the writedown on the value of the tables.

18 Q. But you told them that was written down because of
19 bookkeeping?

20 A. I told them it was written down because the value we took
21 them back at was the purchase price by the client and we had to
22 write them down to the value that was present day, yes.

23 Q. But before you wrote them down, you inflated the value to
24 help Mr. Smith, right?

25 A. The value that was on the papers at 400,000 was the

Gcl2olil

Neville - Cross

1 purchase price by the client.

2 Q. Mr. Neville, you didn't understand my question.

3 A. Sorry.

4 Q. When the original proposal was made, Mr. Smith said to you,
5 Value the tables at \$150,000, right?

6 A. Correct, yes.

7 Q. He then asked you to increase the value of the tables to
8 \$400,000?

9 A. Correct.

10 Q. You believed that it was in order to inflate his
11 commission, right?

12 A. I believed it was, yes.

13 Q. And you did that. You and Mr. Smyth Osbourne agreed to
14 inflate the value of those tables.

15 A. To take the tables back at their purchase price, yes.

16 Q. Inflate the value.

17 A. To take the tables back at their purchase price.

18 Q. You don't like the word "inflate."

19 A. I don't see it that way, sir.

20 Q. You don't see it that way.

21 A. No.

22 Q. Did you mention this to these prosecutors when they were
23 asking you about what wrong things you did in connection with
24 these transactions?

25 A. I did, yes.

Gcl2olil

Neville - Cross

1 Q. You did mention that?

2 A. I said to the prosecutors -- I believe, I am saying, to the
3 prosecutors, that we took the tables back at their purchase
4 price and had to write them down and that was our commission.

5 Q. That's what you said with respect to the chandelier
6 transaction?

7 A. It is the same client with the same goods in part exchange,
8 yes. Or similar, sorry, similar goods in part exchange.

9 Q. Did you tell them that you believed you were helping
10 Mr. Smith inflate his commission to his client?

11 A. I did not.

12 MR. DeVITA: Okay. Your Honor, this is a good time to
13 break.

14 THE COURT: All right. I would very much like to get
15 this all in today, so let's keep the break relatively short,
16 five or so minutes. And we will pick up there, and obviously
17 the sooner we can bring this all to a close --

18 MR. DeVITA: I will do the best as I can, your Honor.

19 THE COURT: The adage if you had more time you would
20 make it shorter didn't prove to be true.

21 MR. DeVITA: I didn't seem to carry through, your
22 Honor, but I think it will be quicker.

23 THE COURT: See you in five minutes.

24 (Recess)

25 THE COURT: Mr. Neville, you remain under oath.

Gcl2olil

Neville - Cross

1 THE WITNESS: Yes.

2 THE COURT: Mr. DeVita, you may proceed.

3 MR. DeVITA: Thank you, your Honor.

4 BY MR. DeVITA:

5 Q. Mr. Neville, you were telling us, I think that the same
6 person, Mr. Harry Smith is it --

7 A. Correct.

8 Q. And what was the name of the firm?

9 A. Gurr Johns.

10 Q. -- also was involved in the purchase or your sale of the
11 boule chandelier, is that right?

12 A. Yes.

13 Q. Let me show you what's been marked as Defendant's Exhibit
14 NN. This is a series of e-mails between yourself and Mr. Olins
15 relating to the sale of that chandelier, isn't that right?

16 A. Yes.

17 Q. And in the e-mail, the first e-mail from Mr. Olins,
18 December 14, 2010, it says, "I just spoke to Greg Rusco. The
19 question arose as to the value of the items that are proposed
20 to be taken back by Mallett in the transaction."

21 Do you see that?

22 A. I do.

23 Q. And then you respond, "We are taking back a pair of
24 chandeliers from the client at \$200,000, which represents our
25 commission on the sale of your chandelier."

Gcl2olil

Neville - Cross

1 A. Yes.

2 Q. So you are also asking Mr. Olins to accept a net of
3 \$1,350,000, right?

4 A. Yes.

5 Q. And that the chandeliers that you are taking back would
6 represent only 15 percent commission to Mallett.

7 A. Approximately, yes.

8 Q. That's what you are saying in this e-mail?

9 A. Yes.

10 Q. Now, let me ask you to look at Exhibit D, which was
11 admitted in evidence yesterday.

12 A. Thank you.

13 Q. If you turn to the second page, it refers to party three.
14 That's Mr. Smith. That's the same person that we have been
15 talking about, who also purchased the candelabras, the
16 dragons.

17 A. Yes.

18 Q. So this is an invoice issued by Mallett on or about -- it's
19 dated January 20, 2011, right?

20 A. It is not an invoice. It is an internal document, yes.

21 Q. But it's an internal -- the second page is the invoice?

22 A. Correct.

23 Q. Okay. So that reflects the invoice for a total of
24 \$2,700,000, right?

25 A. Correct.

Gcl2olil

Neville - Cross

1 Q. Let me show you OO. This is an invoice for the same
2 transaction, isn't that right?

3 A. Correct.

4 Q. And this is the invoice that went to the purchaser?

5 A. Correct.

6 Q. And it reflects, again, the price of 2,700,000?

7 A. Yes.

8 Q. And it says, "Payment will be received as \$1,450,000 cash"?

9 A. Yes.

10 Q. You had told Mr. Olins in your e-mail that there was only
11 \$1,350,000 cash, isn't that right?

12 A. Correct.

13 Q. So that was a lie.

14 A. It doesn't take into account the import duty that we had to
15 pay on the chandelier.

16 Q. You told Mr. Olins that the cash was only \$1,350,000,
17 right?

18 A. To be paid to the bank, yes, because we had to pay an
19 import duty on the chandelier to get it into Europe.

20 Q. It wasn't being sold into Britain, was it?

21 A. This was being sold into Europe, yes.

22 Q. Not Britain.

23 A. Not England, no.

24 Q. And you testified -- so the balance of the -- the
25 difference between the 1,450,000 and the 2,700,000 represents

Gcl2olil

Neville - Cross

1 the valuation of the --

2 A. The purchase price for the chandeliers, I believe.

3 Q. For the chandeliers. That was the value that was being
4 placed on the chandeliers that were being taken back, is that
5 right?

6 A. I believe so, yes.

7 Q. So it wasn't \$200,000, it was considerably more, whatever
8 the --

9 A. Yes, it was considerably more --

10 Q. -- a million two hundred and fifty thousand more, isn't
11 that right?

12 A. It's a million two hundred and fifty thousand, yes.

13 Q. And then they were subsequently written down?

14 A. Yes, indeed.

15 Q. But is the reason for, as you indicated in your earlier
16 e-mail to Mr. Smyth Osbourne, the reason for valuing those
17 tables at that \$1,250,000 --

18 A. The chandeliers, yes.

19 Q. The chandeliers.

20 -- amount was to help Mr. Smith defraud his client,
21 right?

22 A. I was not involved in these negotiations. It was Mr. Smyth
23 Osbourne who was involved with these earlier negotiations with
24 Mr. Smith.

25 Q. But you were aware of it, right?

Gcl2olil

Neville - Cross

1 A. I was aware of them only subsequently.

2 Q. Okay. but you knew that they were a lot -- worth more than
3 \$200,000, which is what you told Mr. --

4 A. I knew they had been invoiced for a lot more than \$200,000.

5 Q. And you knew they were worth more, right?

6 A. I did not think so. Giltwood chandeliers were very
7 difficult to sell and still are today.

8 Q. These giltwood chandeliers were sold, weren't they?

9 A. Yes, I believe they were.

10 Q. Do you know for how much?

11 A. I don't remember now.

12 MR. DeVITA: Marking Defendant's Exhibit PP.

13 Q. Are those the same chandeliers that were part of the
14 trade?

15 A. Yes, indeed.

16 Q. And they sold for 350,000 pounds, right?

17 A. I see that, yes.

18 Q. That's a good deal more than \$200,000, isn't it?

19 A. Yes, it is.

20 Q. And do you know as of the date they were sold, which is
21 April of 2014, what the exchange rate would be?

22 A. No, I don't.

23 MR. DeVITA: I have another converter, your Honor?

24 THE COURT: All right. Why don't we do it as an
25 exhibit since we did last time. QQ.

Gcl2olil

Neville - Cross

1 MR. DeVITA: So QQ.

2 Q. That converter reflects that 350,000 pounds on that date
3 translated, converted to \$587,853. Do you see that?

4 A. I do see that, yes.

5 Q. So that's a good deal more than the \$200,000 that you
6 represented to Mr. Olins was being received back in trade,
7 isn't it?

8 A. Yes, it is.

9 Q. Now, it was the chandelier transaction that essentially
10 precipitated Mr. Olins' request for the wall brackets, isn't
11 that right?

12 A. Sorry, I didn't catch that, sir.

13 Q. Let me start by this. Let me show you Defendant's Exhibit
14 RR. Actually, I'm sorry, I am going to hold off on RR. I will
15 come back to that.

16 (Pause)

17 MR. DeVITA: Bear with me a minute, your Honor.

18 (Pause)

19 THE COURT: Are you almost there?

20 MR. DeVITA: I am looking, your Honor, if I could have
21 just another moment.

22 (Pause)

23 MR. DeVITA: Your Honor, this is Exhibit B to my
24 November 29, 2016, submission. It is a March 14, 2012, e-mail.
25 This is an e-mail from Mr. Smyth Osbourne to Mr. Hutchison and

Gcl2olil

Neville - Cross

1 to others, if I can approach the witness, your Honor.

2 THE COURT: You may. Are you marking this as a new
3 exhibit for hearing purposes or just showing him this?

4 MR. DeVITA: Just showing it to him, your Honor, and I
5 can admit it if it is necessary.

6 Q. But there is a reference in this e-mail that says, "We
7 have" -- talking about Mr. Olins -- "following the sale of one
8 of his pieces at the end of 2010 for more than \$1 million, he
9 agreed to purchase a set of wall lights which we had on
10 consignment from someone else for \$695,000."

11 Do you see that?

12 A. I do see that, yes.

13 Q. Okay.

14 So the purchase that's referring to is -- I'm sorry.
15 The sale that that's referring to is the sale of the
16 chandeliers that we just were looking at, isn't that right, at
17 the end of 2010?

18 A. Yes.

19 Q. So it was the sale of the chandelier that led to the
20 purchase of the wall brackets essentially, isn't that right?

21 A. I did not see it as that, no, sir. I understand that
22 Mr. Smyth Osbourne wrote that, but that was not my perception.

23 Q. They were more or less contemporaneous in time?

24 A. They were contemporaneous in time, yes.

25 Q. With respect to the sale of the wall brackets, your

Gcl2olil

Neville - Cross

1 conversations with -- prior to the beginning of March with
2 Mr. Olins, he had expressed an interest for a long time on
3 those wall brackets, isn't that right?

4 A. That is correct.

5 Q. And you knew that he had owned them at one point, didn't
6 you?

7 A. I didn't know that he had actually owned them. I knew that
8 he was in the process of trying to acquire them. I didn't know
9 that they were actually his.

10 Q. But he was very familiar with them.

11 A. He was very familiar with them.

12 THE COURT: There has been testimony about wall
13 brackets and wall lights. Are they the same?

14 THE WITNESS: No, they are different, your Honor.
15 However, the wording in quite often confused.

16 MR. DeVITA: Your Honor, these are wall brackets, just
17 to distinguish what we are talking about, these are the subject
18 of the debt that Mr. Olins incurred on the books.

19 THE COURT: Since you are not testifying, let me ask
20 Mr. Neville.

21 MR. DeVITA: Oh, I'm sorry.

22 THE COURT: Were there wall brackets and wall lights?

23 THE WITNESS: There were, your Honor. Mr. Olins owned
24 two wall lights, which we sold to a client here in New York.
25 Mr. Olins purchased from us four carved giltwood wall brackets

Gcl2olil

Neville - Cross

1 which were part of his debt to Mallett.

2 THE COURT: But in this e-mail that Mr. DeVita just
3 showed you from Mr. Smyth Osbourne -- and I understand that you
4 didn't write this e-mail -- but do you understand him to be
5 referring to, when he says "the purchase," "that Mr. Olins
6 agreed to purchase the set of wall lights which we had on
7 consignment from someone else for \$695,000," that's actually
8 referencing the wall brackets?

9 THE WITNESS: Correct, your Honor.

10 THE COURT: Thank you.

11 BY MR. DeVITA:

12 Q. And the wall lights had been sold prior to this?

13 A. Correct, sir.

14 Q. Let me show you Exhibit RR. These are minutes from a sales
15 meeting on March 1, 2011, is that right?

16 A. Yes.

17 Q. And you were present at that meeting?

18 A. I was on the telephone for that meeting, yes.

19 Q. You are listed as participating in the meeting.

20 A. Yes, that's correct.

21 Q. Some of the participants were in person, some of them were
22 by telephone, is that right?

23 A. That is right, sir.

24 Q. And there was a discussion of -- MSO, what does that stand
25 for?

Gcl2olil

Neville - Cross

1 A. Michael Smyth Osbourne.

2 Q. And "the figures" refers to the sales figures for the
3 month?

4 A. Yes.

5 Q. For the period?

6 And it says that "these figures do not include the
7 sale of the set of brackets from" and this is now
8 Mr. Degardiola I think you testified?

9 A. Yes.

10 Q. "to Robert Olins, since we do not have a payment schedule
11 for them yet."

12 So there was no payment schedule agreed upon at this
13 point.

14 A. No.

15 Q. It says, "the principal of the sale is confirmed, though
16 payment schedule is not, GHS." That's who?

17 A. That's Mr. Hutchison Smith.

18 Q. The chairman of the firm?

19 A. The chief executive of the firm.

20 Q. Chief executive of the firm.

21 "Notes that he would like to include this sale in
22 March. This is a \$695,000 sale for \$195,000 profit."

23 Are you familiar with the term "revenue recognition,"
24 the accounting term?

25 A. I have heard it, but I am not an accountant.

Gcl2olil

Neville - Cross

1 Q. But you understand that, by including this sale and that
2 profit in the records or in the accounting of Mallett, Mallett
3 is putting that into its profit?

4 A. Yes.

5 Q. Was there pressure at this time to, shall we say, boost the
6 profits of Mallett?

7 A. There was always pressure to be as profitable as possible.

8 Q. And to appear as profitable as possible.

9 A. If you say so, yes.

10 Q. Well, my question to you is, did any accountant say that it
11 was a good accounting practice to recognize this sale and that
12 profit without even having a payment plan?

13 A. Our finance director, Michael Smyth Osbourne, did not
14 question.

15 Q. Did not question.

16 A. Did not question.

17 Q. He just did what he was told.

18 A. I don't believe that is the case. He did not do as he was
19 told, no.

20 Q. Well, he was told to put this on the books as a sale and
21 recognize the profit, right?

22 A. He was asked to, yes.

23 Q. He was asked to.

24 A. I questioned the use of "told" to Michael Smyth Osbourne.

25 Q. And in fact, an invoice was issued reflecting that as a

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Neville - Cross

1 sale by Mallett, right?

2 A. Yes.

3 MR. DeVITA: Marking as Exhibit SS?

4 THE COURT: That one is unfortunate already.

5 MR. DeVITA: Very unfortunate. Unfortunately that's
6 how the alphabet works.

7 THE COURT: All right.

8 MR. DeVITA: I think this is part -- or part of this
9 exhibit was previously marked, your Honor. This is the --
10 marked as a Government Exhibit.

11 BY MR. DeVITA:

12 Q. This internal document -- this entire document relates to
13 the sale -- recorded sale of those brackets, right?

14 A. Yes.

15 Q. And the invoice that's addressed to Mr. Olins indicates a
16 sale at \$695,000, right?

17 A. Correct.

18 Q. This is an internal document. That was not sent to
19 Mr. Olins, was it?

20 A. I believe the invoice was given to Mr. Olins, yes.

21 Q. By whom?

22 A. I don't remember, but I do believe he would have had a
23 copy, a top copy of that invoice.

24 Q. You believe he would have?

25 A. Yes.

Gcl2olil

Neville - Cross

1 Q. You don't remember?

2 A. I don't remember now.

3 Q. You didn't give it to him?

4 A. I don't believe I gave it to him, no.

5 Q. But this particular set of documents are internal documents
6 issued by Mallett for its records, right?

7 A. Yes, indeed.

8 Q. Okay.

9 Did there come a time when Mallett became concerned
10 about the accounting for that transaction?

11 A. Yes.

12 Q. And do you recall participating in a meeting where that was
13 discussed, how to address that was discussed?

14 A. There were a number of discussions between London and
15 myself concerning Mr. Olins' payment of this invoice.

16 MR. DeVITA: I'm not sure if we have seen this
17 document before, but I am going to mark it as Exhibit TT.

18 A. Thank you.

19 Q. Exhibit TT is a copy of the minutes of a meeting of the
20 board of directors of Mallett, is that right?

21 A. Yes.

22 Q. And you were a member of the board of directors, right?

23 A. Yes.

24 Q. And a great deal is redacted, but drawing your attention
25 down to the categories of financials and then it says, "It was

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Neville - Cross

1 agreed that the debtor of \$695,000 owed by Robert Olins for the
2 purchase of a set of wall brackets in 2010 should be provided
3 against."

4 Do you see that?

5 A. I do see that.

6 Q. So that meant that, in accounting terms, a bad debt reserve
7 was established?

8 A. The sale was written off in the 2011 accounts.

9 Q. My question to you is whether the -- what was agreed here
10 was the creation of a bad debt reserve on the accounts of
11 Mallett with respect to that debt.

12 A. I can't answer that accurately as I am not part of the
13 accounting team at Mallett.

14 Q. But you --

15 A. My understanding of this was that, in the public company
16 accounts for 2011, this transaction was canceled.

17 Q. Well, when you say "canceled," it says "provided against."
18 That means it is being made into a bad debt reserve. You
19 understood that as a member of the board of directors voting on
20 this action, right?

21 A. I did not understand the wording "bad debt reserve." The
22 sale was canceled and therefore the figures for 2011 did not
23 reflect the sale of \$695,000.

24 Q. And that reduced the profit?

25 A. For 2011 it reduced the profit.

Gcl2olil

Neville - Cross

1 Q. Okay.

2 Well, wasn't that a current entry to reflect current
3 profits, the reserve? It was reserved against, is that your
4 understanding of what was being accomplished?

5 A. I regret I don't understand the principle "reserved
6 against," no, sir. It is not an accounting term I have come
7 across.

8 Q. Okay. But it also mentions, by the way, on the second
9 page, this is, again, the March 28 board of directors, "The
10 unpaid SEC fine has led the SEC to applying their own lien
11 against" -- "over these assets and serving Mallett, Inc., with
12 a restraining order in August 2011, prohibiting Mallett, Inc.,
13 from selling any of those items it holds on consignment from
14 Robert Olins."

15 Do you see that?

16 A. I do.

17 Q. And this was approximately a week before you actually --
18 Mallett actually did sell the vases?

19 A. Indeed.

20 Q. And this is the board of directors recognizing that the SEC
21 restraint prevents Mallett from selling any of the items held
22 on consignment from Robert Olins?

23 A. May I draw your attention to the fact that it only says
24 Mallett, Inc., in this particular instance?

25 Q. Well, who had the vases on consignment?

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Neville - Cross

1 A. The vases were in London, on the London premises.

2 Q. No. My question to you was, what company had the
3 consignment of the vases?

4 A. Mallett, Inc.

5 Q. And this says Mallett, Inc., is prohibited from selling any
6 of the items it holds on consignment.

7 A. Correct.

8 Q. But it sold them anyway?

9 A. Mallett, Inc., did not sell the vases, Mallett Antiques
10 London sold the vases.

11 Q. What is the relationship between Mallett, Inc., and Mallett
12 London?

13 A. Mallett, Inc., and Mallett London are two separate trading
14 companies. They have a common owner in Mallett PLC.

15 Q. So Mallett PLC owns both.

16 A. Correct.

17 Q. So, in your view, it was okay for Mallett London to sell
18 the vases even though Mallett, Inc., had them on consignment?

19 A. That was not my view. That was the legal advice that we
20 had been given.

21 Q. I am going to show you what's been marked as Defendant's
22 Exhibit UU, not to be confused with W, UU.

23 Mr. Neville, this is a copy of the minutes of a board
24 meeting of Mallett Public Limited Company, PLC --

25 A. Yes.

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Neville - Cross

1 Q. -- which is the parent company?

2 A. Yes.

3 Q. And it says that, "GHS reported that June trading data
4 showed" blank blank "including a 192 pound writeback of part of
5 the Olins' bad debt provision following the repayment by Olins
6 of part of his debt."

7 Do you see that?

8 A. I do.

9 Q. So do you understand that the sale had not been canceled,
10 that a bad debt reserve had been set up on the books, and this
11 resulted in a reduction of that bad debt reserve, that is, this
12 relates to the credit Mallett applied against that debt
13 resulting from the sale of the vases, right?

14 A. I see that.

15 Q. You understand that, correct?

16 A. No, I don't understand it, in truth.

17 Q. Do you know whether this resulted, this 192 pound writeback
18 resulted in an increase of the profits?

19 A. It resulted in the increase of the profits for 2012, yes.

20 Q. Let me draw your attention to the next page. There is a
21 reference there to something called Project Adam.

22 A. Yes.

23 Q. What was Project Adam?

24 (Pause)

25 Q. Let me ask a different question.

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Neville - Cross

1 A. Do ask a different question, please, yes.

2 Q. Was Mallett in the process of trying to sell itself at this
3 time?

4 A. Yes, we were.

5 Q. And was that what Project Adam was?

6 A. May well have been. I don't remember.

7 Q. So that it was important at this time for Mallett to
8 increase its profits in order to help the sale of the company,
9 isn't that right?

10 A. No more important than any other year to show profits for
11 our shareholders, I wouldn't have thought.

12 Q. Well, wasn't it important, to make Mallett an attractive
13 purchase, to have Mallett's profits increased?

14 A. It was always important to try and increase the company's
15 profits.

16 Q. And isn't that part of the reason why pressure was put on
17 Mr. Olins for part of the receipts from the sale of the vases
18 to be applied against his debt, because the debt, the bad debt
19 was reducing profits?

20 A. The bad debt did not reduce any profits in 2012. The bad
21 debt was written off in the public company's accounts in 2011.

22 Q. Mr. Olins --

23 A. Neville.

24 Q. I'm sorry.

25 Mr. Neville, it says that "GHS reported that June

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Neville - Cross

1 trading to date showed" something "including 192,000 pound
2 writeback, a part of Olins' bad debt provision." That means it
3 increased, that writeback increased the profits for 2012,
4 right?

5 A. It increased the profits for 2012, yes.

6 Q. At the time when Mallett was trying to sell itself, right?

7 A. Yes.

8 MR. DeVITA: Your Honor, I am drawing to a close, you
9 will be happy to hear.

10 THE COURT: I am happy to hear that.

11 BY MR. DeVITA:

12 Q. Now, yesterday you were testifying on direct examination
13 about Mr. Olins -- I think you have told the government that
14 Mr. Olins was purchasing an apartment in Spain?

15 A. That was my understanding.

16 Q. Well, isn't it a fact that he was trying to rent an
17 apartment in Spain that you were helping with?

18 A. I believed he was living in a rented apartment, and he was
19 looking to purchase an apartment.

20 Q. Let me show you what is marked as Defendant's Exhibit WW.

21 Now, you had mentioned that some person that Mallett
22 used for its property was helping with Mr. Olins trying to set
23 up his apartment in Spain, right?

24 A. Correct, yes.

25 Q. And that's a reference -- that's what's referred to in the

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Neville - Cross

1 first e-mail on the page ending 4078. Do you see that?

2 A. 4078.

3 Q. That's the second page of the exhibit.

4 A. I am watching it, yes, it is.

5 Q. That is an effort by the person that you had referred him
6 to to try enlist your aid in getting Mr. Neville to pay a fee
7 of 150 -- I'm sorry, 1500 euros -- or at least 500 euros in
8 connection with that apartment, isn't that right?

9 A. I see that, yes.

10 Q. And then you forwarded that on to Mr. Neville?

11 A. Olins.

12 Q. Mr. Olins, right?

13 A. Yes, I did.

14 Q. Then Mr. Olins responded to you on -- the date of it, it
15 says, 1/11, but I believe that is a reversal. The month comes
16 second. Is that right?

17 A. It would appear so, yes.

18 Q. So it is -- he is reporting to you that he is still delayed
19 with "my move to the apartment at Plaza del Cordone because of
20 continuing disagreements with the landlady," correct?

21 A. I see that.

22 Q. And this is the apartment that you had referred someone to
23 help him with, right?

24 A. It appears so, yes.

25 Q. And it says, "The landlady has refused to put in a buzzer

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Neville - Cross

1 security system, and I have refused to move in without one. I
2 even offered recently to pay for the system and get reimbursed
3 from the next rent payment."

4 Do you see that?

5 A. I do see that.

6 Q. Does that refresh your recollection that he was planning to
7 rent an apartment in Spain?

8 A. He had expressed to me a wish to acquire an apartment in
9 Spain and that he was living in a rented apartment, and I now
10 see that the Plaza del Cordone apartment was going to be for
11 rent.

12 Q. And you know he never moved into the rental apartment,
13 isn't that right?

14 A. I don't know, but it looks like it from this e-mail.

15 Q. Well, you knew he never moved to Spain, right?

16 A. That is correct.

17 MR. DeVITA: We are up to X, right?

18 MR. CECUTTI: Yes.

19 MR. DeVITA: I am going to mark as Exhibit XX a series
20 of e-mails between you and Mr. Olins.

21 Q. You are aware, are you not, Mr. Neville, that one of the
22 reasons why Mr. Olins didn't move to Spain is because of health
23 problems that his mother suffered, isn't that right?

24 A. I believe that could be the case, yes, indeed.

25 Thank you.

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Neville - Cross

1 Q. And the first e-mail, dated December 20, this is shortly
2 after your e-mail exchange that we just saw, right? It is
3 about a month later? Talking about the problems with the
4 apartment?

5 A. I see that.

6 Q. Okay.

7 It says, "My mother is back in the hospital with
8 pneumonia. Unless there is a dramatic improvement today, I
9 will not be able to get to New York tomorrow."

10 Do you see that?

11 A. Yes, I do.

12 Q. And then, shortly after that, he sent you a letter, an
13 e-mail, that says, "The past two weeks have been hell here.
14 First the ruptured colon leading" -- this is talking about his
15 mother, isn't that right?

16 A. I believe it is, yes, indeed.

17 Q. "First the ruptured colon leading to sepsis and a
18 colostomy, then double pneumonia with a blood clot in her lung,
19 then internal bleeding caused by the heparin to treat the blood
20 test. When the heparin was stopped, she had a stroke. Then
21 the brilliant doctors decided to put her on a drug called
22 Haldol, an antipsychotic, this to keep an 82-year-old woman
23 quiet. The Haldol almost killed her. It put her in a
24 vegetative state for five days. I demanded that she be taken
25 off that drug and got kickback from the medical team. Three

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1 days after being off this terrible drug, she came back to life
2 today. All is well for the moment except for serious kidney
3 issues. She is eating for the first time in two weeks. Two
4 weeks being on a feeding tube. Bottom line, don't get old" --
5 I second that -- "in the alternative, don't get sick."

6 This is by way of explanation for his not being able
7 to meet with you, right?

8 A. Yes.

9 Q. And also you understand that that is why he never moved to
10 Spain, right?

11 A. I do understand that now, yes.

12 MR. DeVITA: No further questions, your Honor.

13 THE COURT: All right. I have a few questions before
14 redirect.

15 First, in this same e-mail, just looking at it, it
16 continues that "I haven't done anything about business or other
17 issues," and then, in parentheses, it says "brackets."

18 What was that a reference to, as you understand it?

19 THE WITNESS: I don't know, sir, your Honor. I don't
20 know.

21 THE COURT: All right.

22 Second, sticking to "brackets," just to clarify, when,
23 in your view, was the sale of the brackets to Mr. Olins? And
24 by "sale," I mean the agreement.

25 THE WITNESS: In -- two or three weeks before the

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1 invoice, sir. Two or three weeks before the invoice, so that
2 would have been in February 2011.

3 THE COURT: So earlier you saw that e-mail from
4 Mr. Smyth Osbourne in which he talked about the transaction
5 involving the chandelier in 2010.

6 THE WITNESS: Correct.

7 THE COURT: And when was that transaction?

8 THE WITNESS: That was in late 2010, December 2010.

9 THE COURT: Switching gears to the candelabra, the
10 \$50,000 credit, store credit that was given to Mr. Jaeger, was
11 that always to be part of the sale price, always to be part of
12 the deal from the beginning, or was that a product of some
13 additional negotiation?

14 THE WITNESS: That was a product of additional
15 negotiation when I was not able to obtain the full 950,000 in
16 cash as agreed.

17 THE COURT: Can you tell me how that came about, in
18 other words, who you negotiated that with.

19 THE WITNESS: With Mr. Olins.

20 THE COURT: So not with Mr. Jaeger.

21 THE WITNESS: No, your Honor.

22 THE COURT: And over what period of time was that.

23 THE WITNESS: A few days, I believe, on the telephone.

24 THE COURT: And did you have any interaction with
25 Mr. Jaeger about the purchase price before the sale or was it

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Neville - Redirect

1 all through Mr. Olins?

2 THE WITNESS: It was all through Mr. Olins.

3 THE COURT: And did you have any interactions with
4 Mr. Jaeger after the sale?

5 THE WITNESS: Yes, your Honor.

6 THE COURT: Can you tell me about that?

7 THE WITNESS: Mr. Jaeger came in to the gallery on a
8 number of occasions, once or maybe twice, with his wife, in
9 order to select works for -- to purchase on the \$50,000 credit.

10 THE COURT: And what was your exchange with reference
11 to the candelabra?

12 THE WITNESS: I don't remember any exchange of the
13 candelabra. It was all pleasantries about the photographs that
14 he wished to give to his wife.

15 THE COURT: Gotcha.

16 All right? Redirect.

17 MS. GRISWOLD: Yes, briefly. Thank you.

18 REDIRECT EXAMINATION

19 BY MS. GRISWOLD:

20 Q. Mr. Neville, you testified that by February of 2012 you
21 knew that, with respect to the vases, Mallett had a client who
22 was interested in paying significantly more than the Sotheby's
23 estimate of 500 or 550,000?

24 A. Yes.

25 Q. And that you communicated that information to Mr. Olins

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Neville - Redirect

1 around that time?

2 A. Yes.

3 MS. GRISWOLD: I would ask Ms. Meister to please pull
4 up -- I guess you can't pull it up.

5 Q. Do you have Defense Exhibit AA in front of you? It is the
6 June 17, 2012, e-mail.

7 A. Yes, I do.

8 Q. You recall that Mr. DeVita asked you a number of questions
9 about your communications with Mr. Olins after the court
10 approved the sale of the vases in June of 2012.

11 Do you recall those questions?

12 A. I recall being questioned about that, yes.

13 Q. In this e-mail, Defense Exhibit AA, Mr. Olins says to you,
14 "I would be most appreciative if this transaction can be
15 completed today from your London office in the amount indicated
16 below," that is, the 210,000 in cash that he initially asked
17 you for; and then it says, "The larger balance should be
18 applied to the purchase which has been discussed for some
19 time."

20 Do you see that?

21 A. I do.

22 Q. What did you understand that to mean when you received that
23 on June 17 of 2012?

24 A. I understood it to mean the wall brackets.

25 Q. What, the credit to the wall brackets?

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Neville - Redirect

1 A. The credit to the wall brackets, yes.

2 Q. And the part about "it had been discussed for some time,"
3 was that a reference to the fact that you had had discussions
4 about the credit to the wall brackets?

5 MR. DeVITA: Objection, your Honor. This is leading.

6 THE COURT: Sustained.

7 BY MS. GRISWOLD:

8 Q. When was the approval from the court obtained for the sale
9 of the vases?

10 A. In June 2012.

11 Q. Mr. Neville, the credits to the wall brackets that Mallett
12 made for Mr. Olins following the sale of the vases, was there
13 ever any discussion about that credit being for any work that
14 Mr. Olins had done in helping Mallett find buyers for his
15 pieces?

16 A. No, I don't think so, no.

17 Q. Do you recall Mr. DeVita asked you a series of questions
18 surrounding the globes?

19 A. Yes.

20 Q. And you admit that you intended to and did lie to Mr. Rusco
21 about the timing of the sale of the globes, correct?

22 A. Correct.

23 Q. And that you also lied to him about the sale price.

24 A. I misquoted him the sales price, yes.

25 Q. To be clear, you told him the sale price was \$210,000,

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Neville - Redirect

1 correct?

2 A. After all deductions, yes.

3 Q. And at that time, it was your testimony that you believed
4 it to in fact be \$290,000 at the time?

5 A. Correct.

6 Q. So even believing that it was \$290,000, you still misled
7 Mr. Rusco purposefully by \$80,000, is that correct?

8 A. No. \$290,000 less our commission, less the import duty,
9 and less the registration costs came to \$210,000, which is the
10 sum we returned to the bank.

11 Q. You were asked a number of questions about the boule
12 chandelier, the wall lights, vases, the candelabra, and the
13 globes.

14 A. Yes.

15 Q. Did you personally obtain commission or money of any kind
16 from these transactions?

17 A. No.

18 MS. GRISWOLD: No further questions.

19 MR. DeVITA: One.

20 THE COURT: Let me ask a question which may prompt
21 additional questions or inform re-recross.

22 To the extent that you didn't obtain anything
23 personally on the candelabra or vase transactions, tell me why
24 you engaged in these transactions and participated in what you
25 understood at the time to be some degree of fraud.

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1 THE WITNESS: Because, your Honor, I was furthering
2 our business and benefiting our clients.

3 THE COURT: And when you say your clients, who were
4 you benefiting?

5 THE WITNESS: I was benefiting Mr. Olins and I was
6 benefiting the clients purchasing the goods.

7 THE COURT: Okay. Any follow-up on redirect before?

8 MS. GRISWOLD: No, your Honor.

9 THE COURT: Mr. DeVita.

10 RE CROSS EXAMINATION

11 BY MR. DeVITA:

12 Q. Mr. Neville, you were a shareholder of Mallett, right?

13 A. I had 10,000 shares, a little bit more with my -- I had
14 6,000 pounds worth of shares, yes.

15 Q. And to the extent Mallett was marketing itself, you stood
16 to profit by the sale of your shares?

17 A. Yes, I did. Yes, I did.

18 Q. So that increasing the profits of Mallett benefited you
19 financially, didn't it?

20 A. Yes.

21 MR. DeVITA: No further questions.

22 THE COURT: All right.

23 THE WITNESS: Your Honor, could I just qualify that?
24 I had 6,000 pounds of shares in my own name. I did have
25 additional shares from the company when it was sold, as a

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Meister - Direct

1 director of company.

2 THE COURT: Meaning the 4,000?

3 THE WITNESS: No, I had 6,000 pounds worth of shares
4 which I had actually purchased, and I had I think a total of
5 about 20 or 30,000 pounds worth of shares as director's
6 remuneration when I was working in London.

7 THE COURT: Okay. All right. Can we excuse
8 Mr. Neville.

9 MR. DeVITA: Yes, your Honor. Nothing further.

10 THE COURT: All right. You may step down,
11 Mr. Neville. Thank you.

12 THE WITNESS: Thank you, your Honor.

13 (Witness excused)

14 THE COURT: Ms. Griswold or Ms. Magdo, next witness.

15 MS. GRISWOLD: The government calls paralegal Holly
16 Meister.

17 MR. DeVITA: Your Honor, I think my copy of the
18 government exhibits is on the witness stand. May I retrieve
19 it?

20 THE COURT: Yes, please.

21 HOLLY MEISTER,

22 called as a witness by the government,

23 having been duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MS. GRISWOLD:

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Meister - Direct

1 Q. Ms. Meister, are you a paralegal at the U.S. Attorney's
2 office?

3 A. Yes, I am.

4 Q. How long have you been with the office?

5 A. One year and four months.

6 Q. In connection with your testimony today, were you asked to
7 review any materials?

8 A. Yes.

9 Q. Generally what types of materials?

10 A. Bank records, wire transfer records, as well as phone
11 records.

12 MS. GRISWOLD: Let me ask Ms. Pyun to pull up
13 Government Exhibit 107, please. Ms. Pyun, excuse me.

14 Q. Do you see that?

15 A. Yes.

16 Q. Are you familiar with this?

17 A. Yes, I am.

18 Q. What is Government Exhibit 107?

19 A. This is a wire transfer record showing a payment from
20 Mallett to an entity called Northern Wychwood for \$160,000. It
21 was made on June 21, 2012.

22 Q. And do you understand this to be a screen shot from a
23 Mallett system?

24 A. Yes.

25 MS. GRISWOLD: Ms. Pyun, pull up Government Exhibit

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Meister - Direct

1 405, please.

2 Q. Do you recognize Government Exhibit 405?

3 A. Yes.

4 Q. This is one of the exhibits that you were asked to look at
5 in preparation for your testimony?

6 A. Correct.

7 Q. And what is Government Exhibit 405?

8 A. These are Barclays Bank records for Spirit Bear Ltd.

9 Q. Who produced this document to the government?

10 A. The defendant.

11 Q. Is 405 the entire set of bank records for this account or
12 just a subset?

13 A. Just a subset.

14 Q. And what is the date range for the subset?

15 A. June 2012.

16 Q. I will ask you to please look at Government Exhibits 400,
17 401, 402, and 404, and if it's easier to just look in your
18 binder.

19 Are these also bank records that you were asked to
20 look at in preparation for your testimony today?

21 A. Yes.

22 Q. And this series, 400, 401, 402, and 404, are they all from
23 the same account?

24 A. Yes.

25 Q. And what account is that?

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Meister - Direct

1 A. This is a TD Bank account for Spirit Bear Ltd. located in
2 the U.S.

3 Q. I will show you Government Exhibit 600, which is a
4 three-page Power Point document. Are you familiar with this
5 document?

6 A. Yes.

7 Q. Did you help put it together?

8 A. Yes.

9 Q. And what documents did you use to put this chart together?

10 A. I used Exhibits 400 through 405.

11 Q. At a high level, what does this chart show?

12 A. At a high level, this document shows how the \$160,000 we
13 saw in Government Exhibit 107 was used.

14 Q. Let's start with the first slide.

15 Can you describe what's depicted in the first slide of
16 Government Exhibit 600.

17 A. Yes. In the first slide, we see \$160,000 being transferred
18 from Mallett, the art and antiques dealer, to Northern
19 Wychwood; and then, from there, we see \$159,980 being
20 transferred to Spirit Bear Isle of Man Barclays account.

21 MS. GRISWOLD: Ms. Pyun, could you highlight for us on
22 Government Exhibit 405 that wire transfer.

23 Q. Ms. Meister, can you identify the incoming \$160,000 wire
24 transfer. I'm sorry, \$159,980.

25 A. Yes, it is at the bottom of the page.

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Meister - Direct

1 Q. By the way, do you know why it is not for the full
2 \$160,000?

3 A. I believe that it may have been due to a fee on the full
4 160.

5 Q. Going back to Government Exhibit 600, there is a map on the
6 first side. What is that map of?

7 A. This map depicts the Isle of Man, which is located off the
8 coast of the United Kingdom, and where the Barclays Spirit Bear
9 account was located.

10 MS. GRISWOLD: Let's move to the second slide on
11 Government Exhibit 600, please.

12 Q. What does this slide depict?

13 A. This slide depicts how the \$159,980 was spent in the
14 Barclays account.

15 Q. What did you do to determine -- to categorize these buckets
16 depicted on this slide?

17 A. I added up the different amounts that were used in the
18 different buckets you see on the slide.

19 Q. So let's start with the first bucket, 35,331.73 in legal
20 fees. There are a number of names below that. How did you
21 identify those firms as -- or those entities as law firms?

22 A. I researched them on the Internet.

23 Q. And for each of those firms, is there an entry in
24 Government Exhibit 405?

25 A. Yes.

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Meister - Direct

1 Q. And you added those up to get that amount?

2 A. Yes.

3 Q. Moving to the second bucket on this slide, this says
4 interior decorator \$5,000?

5 A. Yes.

6 Q. Can you explain that one?

7 A. This I was able to determine, after participating in a
8 short phone call with Janice Silverstone, along with AUSAs
9 Griswold and Magdo, who confirmed that she worked as Mr. Olins'
10 interior decorator. Additionally, I reviewed Ms. Silverstone's
11 FBI302.

12 Q. And that is marked as 3504-1?

13 A. Correct.

14 Q. It says Silverbrook Farm. Is that because the -- pulling
15 up Government Exhibit 405 -- the wire transfer actually goes to
16 Silverbrook Farm?

17 A. Correct.

18 (Pause)

19 MS. GRISWOLD: Thank you. We can go back to
20 Government Exhibit 600, please.

21 Q. The third bucket on Government Exhibit 600 says "Other
22 Payments."

23 Can you describe what you did, what goes into this
24 bucket of 44,769.88?

25 A. Yes. The Bering Connect and Maria Luisa, I believe, are

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Meister - Direct

1 business entities in Spain based on my research.

2 Q. So are there wire transfers to those entities listed in
3 that bucket, Bering Connect and Maria Luisa on Government
4 Exhibit 405?

5 A. Yes.

6 MS. GRISWOLD: I ask Ms. Pyun to please pull up
7 Government Exhibit 406.

8 Q. Are you familiar with this exhibit, Ms. Meister?

9 A. Yes.

10 Q. What is this exhibit?

11 A. This is a letter from Jay Palmer, the president of Spirit
12 Bear, to Spirit Bear's accountant, essentially depicting how
13 the \$160,000 was used.

14 Q. And for the Bering Connect and the other transfer that you
15 identified that you believed went to entities in Spain, are
16 those reflected on this exhibit?

17 A. Yes, they are.

18 Q. And how are they categorized in the letter to Mr. Palmer to
19 the accountant for Spirit Bear?

20 A. The first to Maria Luisa was categorized as rent, and
21 Bering Connect was categorized as storage.

22 Q. If we could go back to Government Exhibit 600, slide two,
23 the final bucket reflects a \$60,000 wire transfer.

24 A. Correct.

25 Q. Can you explain what this one is?

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Meister - Direct

1 A. This shows a \$60,000 wire transfer to Jay Palmer who, as I
2 said, is the president of Spirit Bear.

3 Q. And is that to an account in Mr. Palmer's name?

4 A. It is into an account in Spirit Bear's name.

5 Q. Spirit Bear U.S. Ltd. or Spirit Bear Isle of Man?

6 A. Spirit Bear U.S. limited.

7 Q. If you turn to the next slide, please, the Government
8 Exhibit 600.

9 And by the way, for that analysis that you did, what
10 was the time period under which all of those payments were
11 made?

12 A. June to July 2012. Specifically June 26 to July 26, 2012.

13 Q. With respect to the Spirit Bear Barclays account, was it
14 June 25 and June 26 of 2012?

15 A. Yes.

16 Q. So a two-day time period.

17 A. Correct.

18 Q. Turning to the third slide, what does this slide reflect?

19 A. This slide reflects how the \$60,000 wire transfer we just
20 saw was used in the TD Bank account.

21 Q. And, again, for the TD Bank account, did you just analyze
22 the time period, a narrow subset time period?

23 A. Yes.

24 Q. And what time period did you look at for the TD Bank
25 account?

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Meister - Direct

1 A. June 26 to July 26, 2012.

2 Q. Between June 26 and July 26, 2012, based on your analysis,
3 were there any other incoming payments into this TD Bank
4 account besides the \$60,000?

5 A. Yes, there were.

6 Q. How many?

7 A. Two.

8 Q. Can you describe those two?

9 A. The first was from an entity called Spain Select which is
10 similar to an Air B & B, as I determined from my research; and
11 that was, I believe, on June 26, 2012. And the second was from
12 a Laurel Brown for \$50,000 on July 9.

13 Q. How much was the Spain Select transaction?

14 A. I think it was approximately 1,000.

15 MS. GRISWOLD: I would ask Ms. Pyun to please pull up
16 page 321 of Government Exhibit 400 and highlight the Spain
17 Select transaction.

18 Q. How much was the incoming wire transfer from Spain Select?

19 A. It was 1,186.19.

20 Q. And based on your review of the TD Bank account records,
21 were you able to determine what the purpose of that incoming
22 wire transfer was?

23 A. Yes.

24 Q. What was it?

25 A. It was a repay of a security deposit to the benefit of

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Meister - Direct

1 Mr. Olins.

2 Q. And then you said that there was one other incoming wire
3 transfer of about \$50,000?

4 A. Correct.

5 Q. And based on your analysis of the records, were you able to
6 determine what happened with that money, the \$50,000?

7 A. Shortly after the wire came into the account, \$50,000 was
8 used on an HPEV stock purchase.

9 Q. So putting aside the \$50,000 from Laurel Brown, that came
10 in and then was used to purchase stock, and the Spain Select,
11 the only other money that came into the account during your
12 review period was the \$60,000 from the Isle of Man.

13 A. That's correct.

14 MS. GRISWOLD: I ask to turn back to Government
15 Exhibit 600, please.

16 Q. Ms. Meister, can you please walk us through your analysis
17 of the \$60,000, that is, how you categorized each of these
18 buckets and the amounts that go into each bucket.

19 A. Yes.

20 So, in the first bucket you see a category for ATM
21 withdrawals, so there we see many withdrawals occurring in
22 Connecticut, specifically Hartford; California; and Washington,
23 D.C. I was able to determine those by looking at the
24 statements, seeing the lines that indicate ATM withdrawals, and
25 then adding them up.

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Meister - Direct

1 Q. To more than \$6,000?

2 A. Correct.

3 Q. Okay.

4 And the next bucket?

5 A. The next bucket, where it says "debit and other purchases,"
6 primarily those were spent on hotels, airfare, travel expenses
7 related to Expedia, Kayak, U.S. Air, and those also added up to
8 more than \$11,000.

9 Q. And the final bucket labeled "furnishings," that's
10 \$21,631.10?

11 A. Yes.

12 Q. What went into this bucket?

13 A. There were two payments which I noticed on two checks, one
14 to Stark and one to J. Robert Scott, which added up to the
15 amount you see, \$21,631.10.

16 Q. Turning to Government Exhibit 401, are these the checks
17 that you were just referring to to Stark and J. Robert Scott?

18 A. I believe they are on -- yeah.

19 MS. GRISWOLD: Ms. Pyun, if you can highlight the one
20 to Stark, please.

21 A. Yes.

22 Q. This is a check for 4,533.60?

23 A. Correct.

24 Q. Do you know what Stark is?

25 A. Stark is a luxury manufacturer of rugs and fabrics.

Gcl2olil

Meister - Direct

1 Q. And also furniture?

2 A. And furniture.

3 Q. And how do you know this?

4 A. I visited the Stark location in New York.

5 Q. When did you do that?

6 A. About a week ago.

7 Q. And the memo line on this check, are you able to see what
8 the payment was for?

9 A. I am able to clearly read the first line to say "two
10 slipper chairs 50 percent" and then the second one I believe
11 says "16" -- I'm not completely sure what that says, the word,
12 but it says "100 percent" and then the bottom says "21
13 Lucretta" --

14 Q. That's fine. Thank you.

15 Based on your visit to Stark, did you determine
16 whether that's a store that's available to the general public
17 or you have to have a professional decorator to visit it?

18 A. You have to have a professional decorator to visit it.

19 MS. GRISWOLD: And, Ms. Pyun, if you could please pull
20 up the second check to J. Robert Scott.

21 Q. This one is in the amount of \$17,097.50?

22 A. Correct.

23 Q. And do you know what J. Robert Scott is?

24 A. J. Robert Scott is a luxury furniture manufacturer.

25 Q. How do you know that?

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Meister - Direct

1 A. I visited the location in New York.

2 Q. Last week?

3 A. Yes.

4 Q. And, again, is this a store that's available to the general
5 public or do you need a decorator to be with you?

6 A. You need a decorator to be with you.

7 Q. And the memo line, does the memo line provide information
8 as to what this payment was for?

9 A. Yes. It says, "two wave ottomans 50 percent;" something
10 "skin," I believe, "100 percent; two Wallace II chairs, 50
11 percent;" and then the last one, I'm not certain, but "50
12 percent."

13 Q. And, finally, on Government Exhibit 401 on the first page,
14 there is a check for I believe \$2,138?

15 A. Yes.

16 Q. Do you know who the individual that this check was made out
17 to is?

18 A. Harriet Carpenos.

19 Q. Do you know who that is?

20 A. That is Robert Olins' mother.

21 Q. I am going to show you what is marked as Government Exhibit
22 801.

23 MS. GRISWOLD: May I approach with --

24 THE COURT: Your witness already did.

25 MS. GRISWOLD: She is doing double duty.

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Meister - Direct

1 Q. What is Government Exhibit 801?

2 A. 801 shows Harriet Carpenos's land line records.

3 Q. For what time period?

4 A. February 2012.

5 Q. Were you asked to do anything with these records in
6 preparation for your testimony today?

7 A. Yes.

8 Q. What were you asked to do?

9 A. I was asked to review them and I assisted in making a chart
10 to analyze them.

11 Q. And is that chart Government Exhibit 801 -- I'm sorry,
12 800?

13 A. Yes.

14 MS. GRISWOLD: If we could pull that up, please.

15 Q. Specifically what were you asked to look for in Government
16 Exhibit 800?

17 A. Specifically I was asked to --

18 MR. DeVITA: Objection.

19 A. -- look at the calls between Mr. Robert Olins and Greg
20 Rusco and as between Mallett and Mr. Olins.

21 Q. And with respect to -- you said these are numbers for
22 Mr. Rusco or AB&T and Mallett. How did you know that? Looking
23 at the first line of Government Exhibit 800, it says
24 "918-481-3816, Greg Rusco." How did you know that is the
25 number for him?

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Meister - Direct

1 A. I researched AB&T and saw that there their main line phone
2 number is 918-481-3800, so I was able to deduce this appears to
3 be Gregory Rusco's personal line at the company.

4 Q. And what about the number listed there for Mallett
5 212-249-8783?

6 A. I researched Mallett, and this is the phone number that
7 comes up for the business listing.

8 THE COURT: Ms. Griswold, do you or your witness have
9 a copy of Government Exhibit 800 for me?

10 MS. GRISWOLD: Oh, yes, your Honor.

11 THE COURT: Thank you.

12 Q. Can you describe what you did?

13 A. Yes. So I looked at the phone records and saw where calls
14 between these numbers and Mr. Olins occurred, and then I was
15 able to indicate the time of the calls and then the duration of
16 the calls. So that is what you see on this chart.

17 Q. And the last call that you had identified in February, what
18 date was that?

19 A. The last call was on February 23, 2012, at 10:51 a.m.

20 MS. GRISWOLD: If we could please go to Government
21 Exhibit 700.

22 Q. Ms. Meister, are you familiar with this exhibit?

23 A. Yes.

24 Q. What is depicted in this exhibit?

25 A. This exhibit shows booked travel for Mr. Robert Olins from

Gcl2olil1

Meister - Direct

1 the time period October 2010 to January 2016.

2 Q. Did Mr. Olins have a trip after February -- what's his
3 first trip after February 23 of 2012?

4 MR. DeVITA: Your Honor, I am going to ask for some
5 *voir dire* on this.

6 THE COURT: Given that it's a hearing, why don't you
7 just wait until your opportunity for cross.

8 Go ahead.

9 MR. DeVITA: My point is, your Honor, there are clear
10 errors on this. This is a summary of information I believe I
11 requested from the government relating to Homeland Security
12 records. These are not the original records.

13 THE COURT: Mr. DeVita, I understand you have a point
14 to make, but I am telling you to wait until cross to make it.

15 So, Ms. Griswold, you may proceed.

16 MS. GRISWOLD: Thank you, your Honor.

17 BY MS. GRISWOLD:

18 Q. So, first, can you identify if there was any booked travel
19 after February 23, 2012?

20 A. Yes.

21 Q. What did you identify?

22 A. There was a trip from New York to Madrid, Spain -- I'm
23 sorry -- yes, that's it, yes.

24 Q. And on what date was that trip?

25 A. That was on February 24, 2012.

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Meister - Cross

1 Q. And the final column of this chart has a column that says,
2 "Reported or confirmed"?

3 A. Yes.

4 Q. And what is your understanding of what that means based on
5 your communications with the agent in this case?

6 A. I understand that "reported" means the travel was booked
7 and that "confirmed" means that Mr. Olins was actually on the
8 flight.

9 Q. So if it's confirmed, you know he was on the flight;
10 reported, you don't know?

11 A. Yes.

12 MS. GRISWOLD: No further questions.

13 THE COURT: All right. Now is your chance.

14 MR. DeVITA: All right.

15 CROSS EXAMINATION

16 BY MR. DeVITA:

17 Q. Just a few other questions before we get to the chart.

18 Ms. Meister, when you spoke to Ms. Silverstone, did
19 she tell you that work for which she was being paid had been
20 performed long before the payment?

21 A. I don't recall.

22 Q. You don't recall one way or the other?

23 A. I don't recall one way or the other.

24 Q. Do you remember whether she was asked?

25 A. I don't recall.

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Meister - Cross

1 Q. I think you testified that the Stark and Scott companies
2 were companies that accept orders from decorators, right?

3 A. That's correct.

4 Q. And Ms. Silverstone was a decorator?

5 A. To my knowledge, yes.

6 Q. So if she ordered materials and they didn't get paid for,
7 she would be responsible for them, right?

8 A. I'm not sure.

9 Q. Do you know how old Ms. Silverstone is?

10 A. I don't know how old.

11 Q. She is elderly? You know she ill and couldn't appear
12 today, right?

13 A. I am aware.

14 Q. You know that she has had health issues for a number of
15 years?

16 A. I didn't know how long the health issues were.

17 Q. But of the amounts that you identified, Stark and Scott,
18 were items that apparently Ms. Silverstone ordered?

19 A. Apparently, yes.

20 Q. And you know that Mr. Olins never occupied the apartment in
21 Spain, right?

22 A. I'm -- to my knowledge, yes.

23 Q. You identified debit card withdrawals. Are you familiar
24 with the name Sandy Harrison?

25 A. I have heard it.

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Meister - Cross

1 Q. She is someone that has been affiliated with Spirit Bear
2 over the years?

3 A. I'm not sure what she is affiliated with, but I have heard
4 the name.

5 Q. And you know that she lives in California, right?

6 A. I did not know that.

7 Q. With respect to the chart that's Government Exhibit 700,
8 there is an indication of travel from Jamaica to Miami with no
9 departure to get to Jamaica in the first place, right? This
10 is -- covers the entire period from December -- from October
11 2010 to January 2016?

12 A. To my knowledge, yes.

13 Q. And that was what was requested from Homeland Security,
14 right.

15 A. To my knowledge that appears to be so.

16 Q. So the Jamaica it just has an "R." That could just be a
17 complete error, right?

18 A. Possibly.

19 Q. There would be some indication of someone going to Jamaica
20 before they could return from Jamaica, right?

21 MS. GRISWOLD: Objection, your Honor. Lack of
22 foundation as to Ms. Meister's knowledge on this.

23 THE COURT: I think we can all assume in order to take
24 a flight from Jamaica one would have to go to Jamaica.

25 MR. DeVITA: Okay.

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1 THE COURT: So go on.

2 BY MR. DeVITA:

3 Q. So you don't know of your own knowledge how much of the
4 other entries are accurate or inaccurate, right?

5 A. I don't.

6 Q. But, at least according to this schedule, in the period
7 between May 13, 2012 and June 13, 2012, it appears that
8 Mr. Olins was in Spain because he has a departure from New York
9 to Madrid on the 13th and a return from Madrid to New York on
10 June 13, right?

11 A. It appears that way.

12 Q. It also reflects that on March 28, that was one that was
13 just "R," so that means it wasn't confirmed, right?

14 A. It means it was reported.

15 Q. Reported. Okay.

16 MR. DeVITA: No further questions, your Honor.

17 THE COURT: All right. Thank you. Can we let
18 Ms. Meister step down?

19 MS. GRISWOLD: Yes, your Honor.

20 THE COURT: All right. You may step down.

21 (Witness excused)

22 THE COURT: Is that the conclusion of --

23 MS. GRISWOLD: The government has no more witnesses.

24 MR. DeVITA: The defense rests.

25 THE COURT: All right. So let's talk about how we are

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1 going to proceed from here.

2 Here is my problem. Much as I really did want to get
3 everything done today, I have a court meeting in 20 minutes and
4 then I have proceedings most of the afternoon until about 4:15.

5 I am happy to entertain some argument or discussion
6 now with respect to the significance of the testimony that I
7 have heard, and then we can reconvene at 4:15 and basically
8 pursue or finish the sentencing proceeding. That would be my
9 vote; and, at the end of the day, my vote is probably the only
10 one that matters.

11 Is that okay with everybody here?

12 MS. GRISWOLD: Yes, the government with like to move
13 forward.

14 MR. DeVITA: Yes, your Honor.

15 THE COURT: All right. Very good.

16 So why don't we take advantage of the time that we do
17 have, the next 15 minutes or so, and at least have a brief
18 discussion concerning the matters that I have heard over the
19 last day and a half. That doesn't give you a whole lot of time
20 to speak about it, and you will have an opportunity during
21 sentencing to talk about --

22 MR. DeVITA: Your Honor, I apologize. I neglected --
23 I have one more exhibit -- actually you can take judicial
24 notice of this, there was a reference to an earlier SEC
25 monetary judgment, and I have a copy of that printed off of

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1 Pacer, and I think it is relevant, if I can hand it up to your
2 Honor, give a copy to the government.

3 THE COURT: Sure.

4 MR. DeVITA: If you recall, during Mr. Rusco's
5 testimony, there was discussion of the monetary judgment and
6 payments that were made on the basis of -- made on the basis of
7 advances by AB&T.

8 And specifically, your Honor, if you look at the third
9 page, there is a payment schedule, the total amount is I think
10 \$180,000, and it gives \$45,000 within 30 days of the judgment,
11 another 45,000 within 180 days, and a third 45,000 payment
12 within 270 days of the judgment. And the testimony was that
13 Mr. Olins had asked the bank to allow him to take some of the
14 proceeds from the sales or to advance those amounts well within
15 those limits.

16 THE COURT: All right. Thank you.

17 I'm not quite sure what the best way to do this is,
18 other than essentially to give you five to eight minutes each
19 to make what case you want from the evidence and testimony that
20 we have heard over the last day and a half.

21 For what it's worth, I think I have a fairly good
22 sense of the record, given that I had read everything before
23 the hearing and obviously have sat and listened carefully over
24 the last day and a half. But why don't you highlight what you
25 think are the most important things in the time that you have;

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1 and, then, during sentencing later, you will have an
2 opportunity to address the 3553 factors.

3 In that regard, I would ask you to refrain from
4 commenting on what I would describe as the sort of financial
5 condition desperation evidence until later, since I think that
6 is more 3553 issue, and I understand there are some disputes
7 there, but focus on the candelabra issues, the vases, the wall
8 brackets, as a focus in the next few minutes.

9 So with that, Ms. Griswold or Ms. Magdo, do you want
10 to take the lead?

11 MS. GRISWOLD: Yes, your Honor. May I use the podium?

12 THE COURT: You may.

13 MS. GRISWOLD: Thank you.

14 The government, as you know, we asked for this *Fatico*
15 hearing. It wasn't something that we expected to do, given the
16 plea agreement here. But I will cut to the chase, since I only
17 have five to eight minutes here. I want to get into three
18 factual areas.

19 We believe that the evidence introduced at this *Fatico*
20 has only reinforced the fact that Mr. Olins made material
21 factual misrepresentations in his sentencing submission that
22 need to be corrected and that were corrected at this hearing.

23 Let me start, first, with the candelabra. Mr. Olins
24 argued that the dragon candelabra conduct didn't involve any
25 criminal conduct on his part; that he never had any intention

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1 of deceiving Mr. Rusco regarding the candelabra; and that it
2 was long after Mr. Jaeger purchased the candelabra that Olins
3 had the opportunity to earn some kind of commission from a
4 resale, and that is in his sentencing submission at page 12 the
5 first full paragraph.

6 He asserts that in April/May of 2013, Mr. Olins and
7 Mr. Jaeger for the first time negotiated a commission, and he
8 also asserts that Mr. Olins advised Mr. Jaeger to negotiate the
9 sale for 800,000 plus a \$50,000 credit to Mallett. The
10 evidence from this hearing flatly contradicts these claims.

11 Before Mr. Jaeger purchased the dragon candelabra from
12 the receiver, he and Mr. Olins had agreed that Mr. Olins would
13 share in the proceeds of the resale if it was successful above
14 a certain price. So how did we learn this and know this from
15 the hearing? For one, Jaeger said this agreement existed. He
16 testified credibly that Olins told him that the receiver had
17 assigned a value of \$432,000 to the dragon candelabra and that
18 Olins was required to make that up. Jaeger had no reason to
19 lie about that.

20 Jaeger also testified that there was never any
21 discussion about paying Olins' commission for the deal. Plus
22 Jaeger's testimony is corroborated by a few different pieces of
23 documentary evidence we looked at during this hearing,
24 including Jaeger's handwritten notes, which is Government
25 Exhibit 303, as well as the fact that Olins was ultimately paid

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1 \$197,000, not 200,000, not an amount related to the ultimate
2 resale price of 1.2 million or the even the \$800,000 in cash,
3 but 197, the exact difference between 432 and 235. That alone
4 is striking.

5 In Jaeger's words, the whole premise of why Jaeger
6 agreed to give Olins anything was because Olins had told him
7 about this purported reserve price. And we know that Rusco
8 testified at this hearing that there was no 432 reserve price
9 at the time that the candelabra transaction went through. The
10 commission excuse is a cover story.

11 And the other reason you know, Olins admitted that in
12 June 2012 he took 160,000 in cash and a 300,000 credit for the
13 wall brackets from the sale of the vases. He claims that the
14 \$160,000 was lucky. He wasn't in on a fraud with Mr. Neville
15 before the court approved the sale. He got it after the fact.
16 He won the lottery.

17 Well, if that were the case, then I guess he got lucky
18 again with respect to the candelabra. And, again, he had
19 nothing to do beforehand with negotiating the resale; but,
20 again, after, he all of a sudden gets a big upside. It is
21 simply not credible. The only person who got nothing out of
22 the candelabra deal was Mr. Neville.

23 So let me now turn to the vases, if I have time to
24 move on to the vases.

25 THE COURT: You may.

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1 MS. GRISWOLD: Olins argues again that he won a large
2 up side on the vases only after the fact of the court approving
3 the vases being sold for \$540,000 in June of 2012. Again, in
4 his sentencing submission, he says, "Mr. Olins contacted
5 Neville about obtaining some funds relating to the sale of the
6 vases after that approval." That's page 11 of his October 14
7 submission.

8 Of course, what this statement is leaving out is that
9 Olins knew that there were extra funds to be obtained, that
10 there would be more money to split up than the 540 obtained by
11 the receiver plus a commission to Mallett of 10 to 20 percent.
12 There would have been nothing to talk about in terms of
13 obtaining some of the funds if there weren't extra funds to be
14 obtained. Prior to June 2012, Olins did know that, because
15 prior to June, Neville told Olins he had a buyer willing to pay
16 significantly more than that amount. And when Olins heard
17 that, he said he wanted a cut. And then Olins helped get Rusco
18 to approve the transaction.

19 Now, Mr. Neville is not a perfect witness, and that is
20 not news to the government. The government, as you know, did
21 not believe Mr. Neville when he proffered. He tried to say
22 that there was no plan to deceive the receiver and he lied
23 because he was trying to stay out of trouble. And he was
24 required to plead guilty to false statements for this. Neville
25 has accepted responsibility, and he will have his day at

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1 sentencing, which is not today.

2 But the question is not whether Mr. Neville is a
3 perfect witness. The question is whether we believe his
4 testimony that he and Olins had an agreement to cut Olins in
5 before Judge Cote approved Mallett to purchase the vases for
6 540,000 in June 2012.

7 Well, take a look at Government Exhibit 106. This is
8 the e-mail showing that before the receiver approved the sale
9 of the vases at 160, Olins had his lawyer putting pressure on
10 Greg Rusco and the bank to allow the sale of the vases to go
11 through. Sure, Mr. Olins wants the pieces to sell, but why
12 push so hard for a sale at 540,000, a price below both of the
13 consignment prices we saw Olins had previously agreed to in
14 Government Exhibits 110 and 111.

15 This e-mail also shows you the communication between
16 Olins and Neville in the critical time period before the
17 receiver approved the sale. The defendant wants you to believe
18 that he had not agreed with Neville to receive a portion of the
19 upside. But if Neville were the mastermind of the fraud, then
20 why would Mallett have cut in Olins at all. Why would Mallett
21 even tell Olins that they had a buyer who paid more? Take a
22 look at Government Exhibit 105, please. That's another e-mail
23 that tells you that Neville is telling the truth about the fact
24 that he had an agreement with Olins prior to June of 2012.
25 This is the April 2012 internal Mallett e-mail in which Neville

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1 is discussing figuring out how much money needs to apply to
2 Olins' debt on the wall brackets. If there was no agreement
3 with Olins as of April of 2012 to be cut in, why would Mallett
4 be sharing any of this money with him? They wouldn't.

5 In addition, Defendant Exhibit AA the June 17, 2000,
6 e-mail that was sent from Mr. Olins to Mr. Neville just three
7 days after Judge Cote approved the vases transaction, has a
8 very telling line. It says, "Please send me the \$210,000 in
9 cash and then apply the rest to my wall bracket account as we
10 have discussed for some time." It makes no sense that the
11 first conversation they would have had about Mr. Olins getting
12 a cut of those proceeds would have been within those last
13 couple of days and yet in that e-mail he says "as we have
14 discussed for some time."

15 And you don't even need Neville at all to conclude
16 that Mr. Olins committed fraud and obstructed justice
17 repeatedly in transactions completely unrelated to Neville. As
18 we know from the testimony of Mr. Rusco yesterday, Mr. Olins,
19 with absolutely zero involvement of Mr. Neville, defrauded AB&T
20 of over \$3 million. He lied to Mr. Rusco about two of the
21 items that were collateral for the AB&T loan -- a carpet and a
22 chair -- that had either been refunded or sold. And not subtle
23 lies, bald-faced lies that millions of dollars in proceeds that
24 should have gone to the bank was somehow held up and had not
25 been received.

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1 And it was Mr. Rusco who discovered this deception in
2 the summer of 2012. He would likely never have discovered this
3 fraud if the receiver had not been appointed. That \$3 million
4 that Mr. Olins used for himself which should have gone to AB&T
5 would have nearly paid off the disgorgement judgment. And if
6 you add in the \$695,000 that Mr. Olins received from the sale
7 of the vases and the dragon candelabra, it would have easily
8 covered the disgorgement judgment.

9 THE COURT: Why don't you bring things to a close.

10 MR. DeVITA: I can stop there. I will turn to the
11 other points later.

12 THE COURT: Thank you.

13 Mr. DeVita.

14 MR. DeVITA: Your Honor, I would like to address the
15 vases first.

16 Mr. Neville told the government in a May 12, 2016,
17 302 -- it is 3501-9 -- with regards to the vases, "Neville
18 called Olins after he received court approval to purchase the
19 vases for \$540,000. Neville told Olins that \$460,000 would be
20 credited to Olins' debt from the subsequent sale of the vases."

21 THE COURT: Can I ask you a question, just to cut to
22 the chase? Why does that make any sense unless there was --
23 why would Mr. Neville, upon getting \$460,000 more than he was
24 reporting, share that information with Mr. Olins let alone
25 agree to give him any of it unless Mr. Olins was in on it in

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1 advance? It just doesn't make a whole lot of sense to me.

2 MR. DeVITA: Well, because, your Honor, Neville and
3 Mallett are now exposed since March on the wall brackets to the
4 tune of \$695,000. They have to cover that. So they devise --
5 it is clear from the April e-mail that there is no agreement.
6 Otherwise there is no need for Mr. Neville to go to bat with
7 Mr. Olins to get him to agree to any part of dividing the
8 profit from the sale of the vases. So Mr. Neville claims they
9 are already in agreement, but he is being told by his boss go
10 to Mr. Olins, go to the bank and get them to agree to allow us
11 to keep some of the money to cover the exposure on the wall
12 brackets.

13 Nevertheless, he doesn't do it until after he has got
14 permission for the sale, because he knows he is not supposed to
15 sell it. He knows -- notwithstanding -- your Honor,
16 Mr. Neville has no credibility. The idea that he believed it
17 was okay to sell these things that were subject to the SEC lien
18 makes no sense, and it is contradicted by his contemporaneous
19 statements. So that he knows that he can't even explain that
20 he has already sold these because he is going to get in
21 trouble. He has got an e-mail in February from Mr. Olins
22 saying, You can't sell without the bank and the SEC's
23 permission. Mr. Olins said that to Mr. Rusco, Mr. Rusco
24 forwarded it to Mallett, Mr. Neville.

25 So the answer is that they decide they have to cover

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1 their exposure on the brackets. They want some part of this
2 profit to do that. Neville says, Go work it out with Mr. Olins
3 and the bank, and he doesn't. He waits until after there is
4 approval for the sale, calls Olins and says: This is what we
5 are doing. So he has to tell him at this point there is a huge
6 profit that wasn't revealed to the bank.

7 And then what happens? Not defending this, this is
8 what he has pled guilty to, Mr. Olins asks for some of that in
9 cash because he is broke. He asks for some of that in cash.
10 Originally he asked for \$210,000. They give him \$160,000.
11 That's what he has pled guilty to, taking that \$160,000 and
12 having it wired to Isle of Man.

13 The e-mail that Ms. Griswold just referred to talks
14 about the purchase we have been talking about for some time,
15 the purchase -- and Mr. Neville said this, one of the few
16 honest things that he said, that was referring to the purchase
17 of the wall brackets that they had been talking about for some
18 time. And now there is money available to pay for some of
19 that. Neville wants it all. Olins, to his regret, agrees to
20 allow them to keep that 460,000 or the 300,000 as long as he
21 gets a piece of it. That's what happened.

22 Mr. Neville has no credibility. He has defrauded
23 Mr. Olins repeatedly. He misled the bank repeatedly. He
24 participated in at least two instances in the sale of items
25 from this estate where he held helped another agent defraud his

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1 client. He is here scrambling to save himself, your Honor.
2 And until it became clear after Mr. Neville -- after Mr. Olins'
3 plea, Mr. Neville told the government that it was June after he
4 got permission -- received approval from the court that he
5 called and told him he was going to take some of the money.
6 So, your Honor, that corroborates Mr. Olins on when that took
7 place.

8 THE COURT: All right. Why don't you turn to the
9 candelabra.

10 MR. DeVITA: The candelabra, your Honor, I think
11 that -- I suggest to your Honor that Mr. Jaeger has credibility
12 issues as well. And he has a grudge, not a rational grudge,
13 but a grudge against Mr. Olins.

14 When Mr. Olins, as Mr. Jaeger was forced to admit, has
15 made millions of dollars over the years, he didn't make enough
16 for him. So he has -- they had litigation that was very
17 bitter, as he had testified. I think that there may have been
18 some understanding prior to the sale, but it was not a formal
19 agreement. When it didn't sell for \$950,000, Mr. Jaeger says,
20 The deal is off. The deal came back later. Maybe there was a
21 confusion as to where the final agreement was. But it was when
22 Mr. Neville and Mr. Jaeger couldn't get along that Mr. Olins
23 became the intermediary. It was Mr. Olins that, as Mr. Neville
24 even admitted, negotiated the additional \$50,000 of the store
25 credit to make the dragon sale go through.

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1 I would submit to you that whatever informal
2 understanding may have existed was then off the table when the
3 dragons didn't sell and that it was only after Mr. Olins got
4 involved to facilitate the sale that there really was an
5 agreement on his -- some part of his debt being reduced.
6 Because, again, it is the benefit of that money is going to
7 Mallett. He never saw a penny of it. He never got the wall
8 brackets, never got a penny of that money that was credited on
9 the dragons. It was the exposure of Mallett that drove what
10 they were doing. And now Mallett needed to reduce the exposure
11 on its books, and therefore it was putting pressure on to get
12 the debt reduced.

13 THE COURT: But it was credited to, in essence, an
14 account at Mallett, albeit an unconventional and strange one,
15 since he didn't take possession of these brackets, correct?

16 MR. DeVITA: He never got them.

17 THE COURT: I understand that. But he came closer and
18 closer as he paid it down through these transactions, correct?

19 MR. DeVITA: And was unable to fund it, your Honor.

20 THE COURT: And how do you explain the \$197,000
21 figure?

22 MR. DeVITA: It is clearly the difference between what
23 they thought it was selling for to the bank and when it
24 didn't -- that sale did not take place in May of 2012, it was
25 supposed to sell for 500 -- I think 432, the sale ultimately

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1 was 235 and the 197 is the difference between the two. It is
2 debt that would have -- had the sale taken place in June as
3 Neville was hoping to bring about, it would have reduced his
4 debt to the bank by that much more, \$197,000 more than the
5 reduction that resulted from the sale to Jaeger. So he lost
6 197,000 that would have been paid down to the bank between June
7 and November of 2012.

8 A year later -- remember, your Honor, the bank sold it
9 free and clear of any encumbrance or any lien, sold it to
10 Mr. Jaeger. The only theory on which Mr. Neville -- of course
11 he never received the money, but the only theory on which he
12 had an obligation is that any money that came into his hand he
13 was obligated to turn over to the bank. That's not, as I
14 understand it, the way that this judgment worked. To say that
15 he can't afford to pay his rent or any of that is just not a
16 fair way of interpreting the obligations on these loans.

17 So, again, what I am suggesting is that Mallett,
18 again, was exposed to the seller from whom it took the brackets
19 and needed to cover them and also was in the process of selling
20 itself. It was putting pressure to cover the bad debt reserve
21 and increase its profits in order to sell itself.

22 THE COURT: I have to go to a court meeting. I do
23 want the government to respond to the excerpt in the proffer
24 302 that Mr. DeVita referred to, that is to say, Mr. Neville's
25 reporting that he called Mr. Olins after the sale was approved

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1 by the court.

2 I will give you another opportunity to expand a little
3 bit on this later hopefully, depending a little bit on time.
4 Here is what I will tell you. I have a proceeding that starts
5 at 3:45 that I don't know precisely how long it will take; so
6 why don't you come at 4:00, and if it ends by 4, we will start
7 immediately thereafter. If it ends a little later, you may
8 have to wait a little bit, but hopefully we will start as early
9 as we can. All right?

10 MR. DeVITA: Your Honor, can we try and reassemble --
11 can we stay in the courtroom to try and gather up the mess that
12 I have made here?

13 THE COURT: You do have to clean up the mess you have
14 made there because I have other matters here this afternoon.

15 MR. DeVITA: Okay.

16 THE COURT: You will have to apologize to
17 Ms. Smallman, and she can discuss the particulars with you, but
18 why don't you take a few minutes and straighten up. As far as
19 I am concerned, if you want to leave some thing in the
20 courtroom until this afternoon --

21 MR. DeVITA: No, I understand that, your Honor. I am
22 just concerned about trying to get some order out of this
23 chaos.

24 THE COURT: Understood. All right. I will see you at
25 4:00. Thank you.

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(Recess)

THE COURT: All right, welcome back, counsel. Let's get started with the rest of the sentencing.

Before I go further, though, I was given a stipulation and order that, as I understand it, extends the deadline that was otherwise today. Given the hour and the date, I thought I might just take care of that in the first instance.

Any objection to my signing this? It pertains to any petition by Mallett with respect to the forfeiture in this case.

MS. MAGDO: Your Honor, it is on consent between the government and a third party or the potential third party. The defendant is no longer a party to the forfeiture proceeding because he has already relinquished all right, title, and interest that he may have had in the subject property.

MR. DeVITA: Yes, your Honor. That doesn't affect my client.

THE COURT: All right. So I will sign that stipulation and order. I don't know if it will be docketed today or tomorrow, but it is signed and dated as of now. In that regard, the deadline is extended.

MS. MAGDO: Thank you, your Honor.

THE COURT: And I will give it to my deputy who can make a copy. I think I understood that counsel for the third party is here. If he wants a copy, that's fine, or she.

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1 With that, let's proceed to sentencing.

2 Let me confirm a few things. First, number one, I
3 want to make sure that any crime victims have been notified of
4 their rights under the Crime Victims Rights Act. I suppose I
5 should have asked that before the hearing as well, but I want
6 to make sure that that is in fact the case.

7 MS. GRISWOLD: Yes, your Honor, and I believe the
8 court received a copy. There was a victim impact letter from
9 Panhandle Realty.

10 THE COURT: I did. Which brings me to the next point,
11 which is the matters that I have reviewed in preparation for
12 today's proceeding.

13 I have reviewed the presentence report dated September
14 1, 2016. I have also received and reviewed a number of other
15 submissions: the defendant's submission dated October 14, 2016,
16 and the attachments to that submission, including letters and
17 an affidavit from various friends and business associates of
18 the defendant; a letter from the defendant's doctor; and a
19 letter from the defendant himself; the loan review document
20 from AB&T that was also entered into evidence at the hearing;
21 and I have reviewed the videotape statement of the defendant's
22 mother.

23 I have received the government's letter of October 19,
24 2016 and the defendant's letter of October 20, 2016. Those
25 were in reference as to whether a hearing should be held.

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1 I have received the government's more formal
2 submission filed on October 28, 2016, and the attachments to
3 that submission, including one invoice from Mallett, the
4 transcript of Mr. Olins' deposition in the SEC action, as well
5 as a complaint and one decision in the Northern District of
6 California case.

7 I have received the defendant's reply letter of
8 November 29, 2016, as well as the attachments to that
9 submission, many of which were also entered into evidence at
10 the hearing, as well as the letter that counsel just referred
11 to from Panhandle Realty dated September 16, 2016, and the
12 attachments to that submission, namely, other letters, all of
13 which were transmitted under cover letter from the U.S.
14 Attorney's office dated November 23.

15 Have the parties received unredacted versions of each
16 of the foregoing submissions?

17 I should also say obviously I have considered the
18 evidence presented at the hearing over the last day and a half,
19 both the testimony and the evidence that has been offered.

20 MS. GRISWOLD: Yes, your Honor, we have received all
21 of that.

22 MR. CECUTTI: Yes, your Honor, we have.

23 THE COURT: Are there any additional submissions that
24 I should have received?

25 MS. GRISWOLD: Not from the government.

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1 MR. CECUTTI: No, your Honor.

2 THE COURT: The defendant's submission of October 14,
3 I think, is the only one that was submitted with proposed
4 redactions. Those redactions are approved. Given the nature
5 of -- give me one second.

6 (Pause)

7 THE COURT: I apologize. Again, I think the October
8 14 submission is the only one with proposed redactions, and
9 those are approved. I will file the unredacted version of that
10 submission under seal, which will be available to counsel in
11 the event of an appeal without further application to me.

12 The only other submission that I think is not on the
13 docket is the so-called victim impact letter. I am inclined to
14 think that it probably should be. I think the letters attached
15 to that letter were submitted to Judge Cote and are public on
16 another docket already. I'm not sure there is anything private
17 in those letters *per se*. I am also open to the possibility
18 that they should be redacted. I don't think there is any
19 personal information on there. I think it is all company
20 information.

21 But, Ms. Griswold, do you have a view on that?

22 MS. GRISWOLD: We agree with the court. We reviewed
23 them, and I don't see anything in there that would require
24 redaction.

25 THE COURT: So why don't you docket those in the next

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1 day or two, please, so that they are part of the public record
2 as well.

3 Normally I would turn to the presentence report but
4 here there are objections and my rulings on those objections
5 obviously relates to my reactions to the evidence presented at
6 the hearing over the last day and a half, so let's finish up
7 our discussions from earlier, and then I will tell you where I
8 stand with respect to those issues.

9 I did mention that I would give the government the
10 opportunity to respond and wanted the government to respond in
11 particular to the argument concern Mr. Neville's proffer
12 statement and the statement in the 302 indicating that he had
13 called Mr. Olins after the court approved the sale of the vases
14 to propose dividing the overage, I think is the way he
15 described it.

16 But, Ms. Griswold or Ms. Magdo, do you want to
17 respond?

18 MS. GRISWOLD: Yes, your Honor. Thank you.

19 Your Honor, we do want to address the court's question
20 regarding the reference, I think it was in 3501-9, to
21 Mr. Neville calling Mr. Olins after the court approved the sale
22 of vases.

23 It is true that Neville called Olins in June 2012,
24 after the court approved the vase transaction. Once Neville
25 had confirmation of the court approval for \$540,000, he reached

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1 out to Mr. Olins to discuss the specific.

2 But the fact of this conversation in June 2012 does
3 not undermine the fact that Olins had requested and in fact
4 Mr. Neville had agreed before June 2012 that Olins would get a
5 cut of the difference between the 540,000 price paid to the
6 receiver and the higher price offered by the sheikh.

7 And I wanted to point your Honor's attention to some
8 of the other statements by Mr. Neville in the 3500, because
9 Mr. Neville has always been consistent about the fact that
10 Olins asked to be cut in on the deal before June of 2012. And
11 3501-9, that is one of the last proffer sessions that the
12 government had with Mr. Neville, and we believe that if you
13 read everything together, he is finishing the story in terms of
14 the chronology of the last -- when the 160 discussion happens,
15 that is, the June 2012 phone call is after he receives word
16 that the court has approved the transaction and takes the step
17 of then calling Mr. Olins to discuss how it is going to be
18 broken up.

19 So, in particular 3501-2, that is an MOI from
20 Mr. Neville's first proffer with the government, the vases are
21 discussed at page 6, and at page 6, Mr. Neville states very
22 clearly that, by April 2012, Olins had asked to be cut in.

23 And 3501-5 are notes from an in-depth proffer in which
24 the vases were covered at length. And, again, here, at page 2
25 of 6, Mr. Neville states that, by April 2012, he says by when

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1 Mallett received money on the vases, which we know was April
2 2012, that Olins had asked to be cut in.

3 And that's also what Mr. Neville testified to in this
4 court. This testimony began at about page 180 of yesterday's
5 transcript, and Mr. Neville stated that, well before June of
6 2012, he and Mr. Olins had an agreement that Mr. Olins would be
7 part of the deal. And he testified, at page 197 of yesterday's
8 transcript, that after the court approved the sale, he did the
9 next logical thing, he called Mr. Olins to iron out the
10 details.

11 Now, if Mr. Neville had been shown 3501-9, which he
12 was not, he would have acknowledged that, yes, he called
13 Mr. Olins. But we expect he also would have testified, if
14 asked, Is that the first time that you discussed with Mr. Olins
15 the possibility or the overage concept, he would have said,
16 Absolutely not, and that that is borne out by the rest of his
17 testimony before your Honor as well as the other proffers that
18 he had with the government before the proffer statements
19 created in 3501-9.

20 THE COURT: All right. Thank you.

21 MS. GRISWOLD: Do you want me to continue in terms of
22 the factual points that we had wanted to make coming out of the
23 hearing or --

24 THE COURT: I thought I did that earlier.

25 MS. GRISWOLD: Well, your Honor, we had hoped to also

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1 address the wall brackets. In our view, there had been some
2 factual assertions by Mr. Olins in his submission about the
3 candelabra, about the vases, and also about the wall brackets.

4 But if your Honor feels that it has enough factual
5 information, I certainly don't need to belabor us any more than
6 we have.

7 THE COURT: I think it's too late for all that. Hang
8 on one quick second.

9 (Pause)

10 THE COURT: You don't need to belabor it. In a case
11 where, putting aside the acceptance of responsibility credit,
12 there is actually no dispute about the guidelines calculation,
13 I think we have spent an inordinate amount of time to fill me
14 in on the background, relevant background here.

15 Let me tell you my views with respect to the matters
16 that were in dispute, which, again, it is a peculiar situation
17 in the sense that I am not sure formal findings need to be made
18 because there aren't really any issues, again, other than the
19 possibility of the acceptance points being in play that I need
20 to make, that is to say, no specific findings.

21 Having said that, I will say that, here, I am sort of
22 working a little bit off of the government's submission of
23 October 28 that identified four issues in dispute that I think
24 were thoroughly addressed in the hearing, and I will say, as a
25 bottom line, that I largely agree with the government's view of

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1 the evidence.

2 In my view, I would think that the evidence amply
3 supports the government's theory that Mr. Olins was aware of
4 and involved in the effort to obtain a surplus or overage with
5 respect to the sale of the vases, that he was well aware of it,
6 and partially responsible for it in advance of that sale, and
7 that there was a prearrangement for him to get a portion of
8 that overage going in to the transaction. I think that that is
9 supported not only by Mr. Neville's testimony, which I do
10 credit, and that is probably in and of itself sufficient, but
11 that testimony is corroborated by the other evidence, some of
12 which was cited by Ms. Griswold earlier, including the e-mail
13 referencing the fact that attributing a portion of that amount
14 to the wall brackets had been discussed for some time, and
15 that's Defense Exhibit AA, Government Exhibit 105, the April 17
16 e-mail, in which there is discussion of what portion of the
17 excess would be attributed to Mr. Olins and his account, if you
18 will; and, at the end of the day, it just is consistent with
19 what I think common sense suggests. I find it far-fetched to
20 believe that Mr. Neville single-handedly arranged for a sale
21 above the 540,000 mark and then shared that fact with Mr. Olins
22 and essentially volunteered to give him that money when he
23 wouldn't necessarily have even known about it. I think much
24 more likely and consistent with the other evidence that I will
25 discuss in a moment is that Mr. Olins was very much involved in

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1 all of that, and it was his effort to obtain money for his own
2 purposes and also to satisfy the debt that he owed for the wall
3 brackets.

4 So all of that is to say that I do agree with the
5 government's view on that issue.

6 Second, and similarly, I agree with the government's
7 view on the candelabra issue. I am less sure of all of the
8 particulars here. That is to say, I think the timing and
9 specifics of each aspect of the transaction are a little bit
10 unclear, and the witnesses were not entirely in agreement,
11 which I don't think is surprising, given how long ago these
12 events took place and the like; but, the bottom line is, I
13 agree with the government's view that Mr. Olins saw an
14 opportunity in advance of the sale to pay down his debt on the
15 wall brackets or obtain money for his own purposes, that he
16 essentially arranged for Mr. Jaeger to buy the candelabra at a
17 relatively low price, understanding and hoping that he would be
18 able to sell it at a higher price through the consignment to
19 Mallett, and that he would then benefit from that.

20 I think whether all of that was precisely scheduled
21 out at the time is a little bit unclear. I think, obviously,
22 there were some aspirations here in terms of whether they would
23 be able to arrange a sale since Mallett had not succeeded in
24 selling the candelabra for some time on its own, but I
25 certainly think that he had reason to know that there would be

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1 a purchaser at a higher price, that there would be some
2 surplus, that he saw this as an opportunity to give an
3 advantage to Mr. Jaeger, for whatever reason, either friendship
4 or whatever debt he owed him, and to benefit himself.

5 I find it hard to believe, again, just as a matter of
6 common sense, that Mr. Jaeger would agree to give him what
7 would otherwise be a fairly random number, \$197,000, unless
8 Mr. Olins told him the story that Mr. Jaeger testified that he
9 told him, namely, that he had to pay the difference between the
10 \$432,000 figure and the 235,000 purchase price. And I credit
11 Mr. Jaeger's testimony on that score, too. I certainly agree
12 with Mr. DeVita that Mr. Jaeger obviously has some history of
13 some anger or disagreement toward the defendant; but, the
14 bottom line is, I believed his testimony on that score, which
15 is further corroborated by his contemporaneous notes and,
16 again, common sense and the pattern of conduct that I am
17 describing here.

18 Third is the wall brackets. Here, I largely adopt the
19 government's view of things, but I'm not inclined to believe or
20 think that the defendant had some sort of sinister plan to use
21 the wall brackets as an alternative bank account that would not
22 be visible to or known by the SEC. I think, instead, it is
23 quite clear that the defendant wanted the wall brackets; that
24 he coveted them for some amount of time; and when they were
25 available and back on the market, if you will, that he seized

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1 the opportunity to try and obtain them, albeit by essentially,
2 I mean, he didn't have the funds at the time, but he agreed to
3 purchase them for the \$695,000 figure that he agreed to
4 purchase them or 675, I can't remember, all of which is to say,
5 I don't think -- I think it was a confluence of circumstances
6 where he saw an opportunity to get something that he had long
7 coveted, and that also enabled him to engage in these
8 transactions in a nontransparent way that would make it less
9 likely that the SEC, or anyone else for that matter, any
10 creditors, would be aware of the money that he was obtaining
11 from them.

12 I further find that that -- that the defendant in his
13 sentencing submission made the claim that he had agreed to
14 purchase the wall brackets prior to the disgorgement order. As
15 far as I can tell, there is no evidence to support that claim
16 whatsoever.

17 I think Mr. Neville's testimony -- which I do
18 credit -- and the records that I have seen all indicate that
19 that transaction occurred in March of 2011, after the
20 disgorgement order was entered; and, furthermore, the
21 defendant's submission states that he was not able to proceed
22 with the purchase because of the disgorgement order. I do not
23 credit that either. I think it is quite clear that he did
24 continue to pursue the wall brackets. I think ultimately that
25 was not successful, because he was not able ultimately to pay

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1 off the debt largely because I think it came to an end with
2 this case, but I think his intention and actions were to pay
3 down that debt in the hopes of ultimately getting the wall
4 brackets.

5 The Spirit Bear piece of the story, I'm not sure what
6 to say about it, but I think, consistent with what I see as a
7 larger pattern of deception here, I think it is quite clear
8 that at some point Mr. Olins either thought that these being in
9 his name would be a problem or saw an opportunity to use this
10 asset as collateral with respect to the transaction that
11 Mr. Jaeger testified about and therefore saw that it was or
12 felt that it was in his interest to transfer the invoice to
13 Spirit Bear. But I think it is quite clear that even that was
14 really a formalism and that the reality of the matter is that
15 he had an interest in the wall brackets and that they would
16 have been personal property if he had ever obtained them.

17 Finally, the last category, the financial conditions
18 sort of desperation category, if I can call it that. There, my
19 view falls somewhere in between the two parties, which is to
20 say that I do credit the defendant's account to some extent of
21 his financial condition, which is to say that I don't think
22 that he was living high on the hog or really living a lavish
23 life, and he clearly was struggling to sort of maintain his
24 lifestyle, to satisfy debts, to pay off lawyers, and clearly in
25 not particularly desirable and one might even say dire straits.

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1 That being said, I think the government has presented
2 a pretty compelling case that some of the money that he
3 obtained through the conduct that is at issue here was used for
4 his own purposes to finance an apartment in Spain and to do
5 things that clearly should not have been done, given the debts
6 that he owed to the bank and to the SEC and the orders that the
7 court had entered in this case. I will leave it at that.

8 So there is no question that he used it for his own
9 selfish purposes. He used it to maintain a certain lifestyle.
10 At the end of the day, I don't think that that lifestyle was
11 perhaps as high flying as it once was or as the defendant might
12 have wanted it to be, but I think there is no question in my
13 mind that he did this to advantage himself in some respects.

14 So that sort of tells you my views of the evidence.
15 In light of that, let's turn to the presentence report.

16 I don't know who is handling sentencing at the back
17 table.

18 MR. DeVITA: Mr. Cecutti.

19 THE COURT: Okay. Mr. Cecutti, have you reviewed the
20 presentence report?

21 MR. CECUTTI: Yes, I have, your Honor.

22 THE COURT: Have you discussed it with Mr. Olins?

23 MR. CECUTTI: Yes.

24 THE COURT: Putting aside the sentencing guidelines
25 for a moment, do you have any objections to the factual

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1 recitations set forth in the report in light of the, well, I
2 will call them findings, but the findings that I just
3 articulated?

4 MR. CECUTTI: No, your Honor.

5 The only thing I will point out is, and I believe the
6 government and us are in agreement on this, is probation
7 believed that a two-point enhancement for obstruction under
8 3C1.1 was applicable.

9 THE COURT: Let me hold off because I haven't turned
10 to the guidelines yet. I am just asking about the factual
11 recitation.

12 MR. CECUTTI: No, no.

13 THE COURT: Mr. Olins have you reviewed the
14 presentence report?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: And have you discussed it with Mr. DeVita
17 and Mr. Cecutti?

18 THE DEFENDANT: Yes, I have.

19 THE COURT: And have you had enough time to discuss
20 the presentence report with them and to discuss anything that
21 you would want to raise in connection with your sentencing
22 today?

23 THE DEFENDANT: Yes, I have.

24 THE COURT: All right.

25 Ms. Magdo or Ms. Griswold, have you reviewed the

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1 presentence report?

2 MS. GRISWOLD: Yes, your Honor.

3 THE COURT: Again, putting aside the guidelines for a
4 moment, any objections to the factual recitation?

5 MS. GRISWOLD: No.

6 THE COURT: Hearing no objections, again, I understand
7 that that is, in light of my findings, not necessarily what the
8 defendant's view of the evidence is, but hearing no objections,
9 I will adopt the factual recitations set forth in the report,
10 which will be made part of the record and kept under seal. If
11 an appeal is taken, a presentence report as well will be
12 available to counsel without further application to me.

13 Now I will turn to the guidelines. As counsel know, I
14 am no longer bound by the guidelines, but I am required to
15 accurately calculate the guidelines and consider the applicable
16 guidelines range in imposing sentence.

17 In this case, there was a plea agreement in which the
18 parties stipulated to a particular calculation of the
19 sentencing guidelines. Here the presentence report reaches a
20 slightly different calculation based on its views of how the
21 offenses or whether the offenses should be grouped and
22 therefore whether an obstruction of justice enhancement should
23 apply.

24 I guess my question -- I will start with the
25 government -- is, given application note 8 to 3C1.1 and

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1 application note 3 to 2J1.2 of the guidelines which, as I
2 understand it, is what probation based its views on, why
3 probation is not correct here?

4 MS. MAGDO: Your Honor, with respect to the grouping,
5 we gave a lot of thought to this before we entered into the
6 plea agreement, whether the two offenses should be grouped or
7 not. We couldn't find a lot of precedent or case law on this,
8 and our position was ultimately, the harm of the two offenses
9 is distinct enough that the statutes punishing money laundering
10 and the statutes against obstruction of justice are really
11 aiming to criminalize two distinct types of harm, one being a
12 harm in, well, the administration of justice and functioning of
13 the court system and money laundering being a more diffuse harm
14 to society, and so we do abide by the, we do stand by the terms
15 of the plea agreement where we did count them as separate
16 groups.

17 THE COURT: And I guess what I don't necessarily buy
18 about that is, here, the money laundering was in aid of the
19 obstruction, that is to say, that the gravamen of the
20 obstruction was that the defendant concealed assets, money from
21 the court, and the way he did that was by engaging in money
22 laundering. So isn't there a sufficient nexus between the two
23 that they should be grouped?

24 MS. MAGDO: There could be, but with money laundering,
25 you have that problem of a potential merger issue where the act

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1 that is the money laundering also is the act that is the SUA.
2 So, here, the two acts, we are careful to distinguish the two.
3 The promotion is -- the money laundering is the sending of the
4 money from the account in New York to the Isle of Man. That's
5 the international money laundering, and it is in order to
6 promote the obstruction, which is what occurred -- what the
7 defendant did in the California court and in the New York court
8 by giving false deposition testimony, by filing false
9 affidavits, and by making it more difficult for the court and
10 for the SEC to find the assets that he had.

11 So I think we were a little bit cautious because of
12 the potential merger problem. And, in this case, your Honor is
13 right, the two do seem very closely related, but I think we
14 still saw the harms that these types of offenses criminalize as
15 distinct enough that we felt that they should not be grouped.

16 THE COURT: While you are up, do you want to address
17 the question of acceptance of responsibility credit? Is it
18 your view, in light of the hearing and the findings that I
19 articulated, that the defendant should not get the three points
20 for acceptance of responsibility?

21 MS. MAGDO: Well, your Honor, that the court's factual
22 findings seem to be almost entirely in line with the
23 government's factual allegations that were in the complaint, in
24 the indictment, in our sentencing submissions, and that the
25 defendant has denied at pretty much every turn, at the stage of

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1 sentencing submissions and basically for the last two days, the
2 defendant has not only -- well, first of all, the defendant
3 could have remained silent with respect to, say, the dragon
4 candelabra transaction. He did not. He could have just denied
5 it. But he went even further than that. He came up with an
6 alternative narrative of what happened that I think your Honor
7 agrees had no basis in evidence and, after taking us through
8 two days of testimony, still has no basis in evidence. We
9 think that this type of behavior, post-plea behavior is
10 inconsistent with someone who has truly demonstrated acceptance
11 of responsibility. So, yes, your Honor, we would move to deny
12 the three acceptance points in this case.

13 THE COURT: All right. Mr. Cecutti.

14 MR. CECUTTI: Your Honor, we believe that the three
15 points should be granted to Mr. Olins. Mr. Olins has accepted
16 responsibility.

17 He pled guilty back in, I believe, June. He pled
18 guilty to the charges that are in the plea agreement.

19 He, as part of our submission, provided a letter
20 indicating that he accepts responsibility. That's what we
21 anticipate him saying today. His best recollection was what we
22 submitted in terms of the events in question.

23 At the end of the day, he doesn't deny the fact that
24 he received proceeds and disbursed them in a way that was
25 criminal and that he committed crimes. He doesn't deny that.

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1 And, for that reason, he should be receiving the three points
2 for acceptance of responsibility. He doesn't deny the charges
3 that he pled guilty to and therefore should receive those
4 points.

5 THE COURT: And do you wish to address the grouping
6 issue?

7 MR. CECUTTI: We share the same view as the
8 government, your Honor. We think that the harms are
9 sufficiently distinct whereby the two-point enhancement for
10 obstruction should not apply.

11 THE COURT: I think the grouping question is a close
12 one, and in the absence of the parties' agreement I might be
13 inclined to have viewed it the other way. But I think it is
14 close and, in light of that, I will honor the parties'
15 agreement and therefore adopt your agreement and proposed
16 calculation with respect to the guidelines.

17 I am not, however, going to give the defendant credit
18 for acceptance of responsibility. I think that while he has
19 technically accepted responsibility in the sense that he pled
20 guilty to the two counts for which he is being sentenced, I
21 think the reason that we had the hearing in these slightly
22 unusual circumstances is that the view he took of the evidence
23 really minimized his culpability to the absolute minimum that
24 would satisfy the elements of those statutes and basically
25 described himself as sort of an almost innocent beneficiary of

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1 criminal conduct by Mr. Neville. I think he, in doing so, has
2 flat out just not accepted responsibility for what I see as a
3 pattern of deception and lies and fraud.

4 Given that, I think this is one of those rare
5 situations where, notwithstanding the plea, acceptance of
6 responsibility credit is not warranted, and I therefore will
7 not include the three-point credit for acceptance of
8 responsibility. The third point obviously is no longer
9 available, because it is available only on a government motion
10 and the government is no longer making that motion.

11 Now, in light of that, if I am not mistaken, between
12 the parties' agreement and that modification to it, I, using
13 the November 2016 edition of the guidelines, I think, if I am
14 not mistaken, find that the offense level is a 23, criminal
15 history category is a I, the guidelines range is 46 to 57
16 months, and the fine range is \$20,000 to \$500,000.

17 Are the parties in agreement that that is consistent
18 with what I just said?

19 MS. GRISWOLD: Yes, your Honor.

20 MR. CECUTTI: Your Honor, may I just confer with the
21 government.

22 THE COURT: Yes.

23 (Counsel confer)

24 MR. CECUTTI: Yes, that's correct, your Honor.

25 THE COURT: So I will adopt that calculation, then.

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1 In the plea agreement, the parties each agreed not to
2 seek a departure from the stipulated sentencing guidelines
3 range, admittedly, a different one than the one I just found,
4 but is that correct?

5 MS. GRISWOLD: Yes, your Honor, although we believe
6 that there is a carveout for the acceptance, so we are at this
7 point intending to seek a sentence within the new guidelines
8 range.

9 THE COURT: Understood.

10 My question is, does anyone think there is a basis for
11 a departure within guidelines system and as distinct from what
12 has come to be known as a variance here?

13 MR. CECUTTI: No, your Honor.

14 MS. GRISWOLD: No, your Honor.

15 THE COURT: I agree. That is to say, that there are
16 no bases within the guidelines system that would warrant a
17 departure.

18 Having set up all of that, and recognizing that I have
19 read and reviewed a lot of material in this case and sat
20 through a day and a half of a hearing and you do not need to
21 repeat what you have stated in your submissions, I will give
22 the parties an opportunity to be heard.

23 I will start with the government.

24 MS. GRISWOLD: Your Honor, we don't have much more to
25 say. We believe that deterring this defendant from repeating

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1 this pattern and deterring other would-be defendants from
2 hiding assets from the government when they don't want to
3 comply with a civil judgment, but most importantly promoting
4 respect for the law and for the courts are all significant,
5 important ends of justice in this case that support a sentence
6 within the guidelines range of 46 to 57 months.

7 THE COURT: Can I ask you just a couple of specific
8 questions?

9 MS. GRISWOLD: Sure.

10 THE COURT: First, I'm not inclined to -- well, I
11 guess the question is, what weight, if any, I should give the
12 purported victim impact statement. I don't know if they are,
13 specifically speaking, a victim of the crimes to which
14 Mr. Olins has pleaded guilty. But the letter references or
15 speculates that there were other fraudulent transactions.

16 Do you believe there is any basis to that? Have you
17 investigated that? What weight, if any, do to you think I
18 should put on it?

19 MS. GRISWOLD: We have not investigated it. Our view,
20 in reviewing the letter, is that the conduct that Panhandle
21 Realty is driving at is really the conduct that has been before
22 the court in terms of the transactions that Judge Cote
23 considered and that the court is familiar with in this case.
24 We don't have any information to suggest that there are other
25 instances of fraud, and so we think that the conduct that's

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1 articulated in that victim impact letter is already before the
2 court.

3 THE COURT: All right. Second question, in his
4 submission, the defendant or defense counsel indicated that the
5 BOP doesn't allow diazepam, the medication that the defendant
6 receives. Is that true to your knowledge, and do you know if
7 there is a substitute that is available or do you know anything
8 about that?

9 MS. GRISWOLD: May I consult for a moment.

10 THE COURT: Yes.

11 (Counsel confer)

12 MS. GRISWOLD: Your Honor, we do not know the answer.
13 We can certainly find out expeditiously.

14 THE COURT: All right.

15 And, lastly, your views on restitution. I feel like
16 at some point in this process I saw a proposed restitution
17 order, but I no longer know where it is or when I got it. I
18 recall that the proposed restitution was in the amount of
19 \$657,000.

20 MS. GRISWOLD: Yes, payable to the receiver. We can
21 resubmit that after. We have it in electronic format.

22 THE COURT: I think my deputy just located it. And I
23 take it the 657, that is the 460,000 attributable to the vase
24 transaction and the 197 attributable to the candelabra?

25 MS. GRISWOLD: That's correct.

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1 THE COURT: Okay, Mr. Cecutti, do you wish to be
2 heard?

3 MR. CECUTTI: Your Honor, pursuant to the plea
4 agreement, we cannot ask for a sentence below the guidelines.
5 That's clear. That's what we agreed to.

6 However, the plea agreement obviously doesn't
7 foreclose your Honor from considering all of the factors under
8 3553(a) to determine what is the appropriate sentence not for,
9 in our view, this defendant, but a person, Robert Olins, and to
10 impose a sentence that is sufficient and not greater than
11 necessary to achieve the purposes of sentencing in this case
12 for Mr. Olins based upon the offenses that he has committed.

13 Now, Mr. Olins recently turned 60 years old, a week
14 ago today; and, at his core, he is a good person. This is
15 somebody who is sacrificial; who has lived his life to trying
16 to and helping other people; developed close relationships and
17 friendships with others, and tries to help and serve them to
18 the best of his ability, which we believe is reflected in the
19 numerous letters that we have provided as part of our
20 submission.

21 The other important consideration for your Honor is
22 that Mr. Olins is a dedicated son to his elderly mother. I
23 have had the opportunity to visit with Ms. Carpenos; and, from
24 what I observed, they have a very close relationship, a very
25 tight one. But this is something more than just a mother/son

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1 relationship. Mr. Olins is her sole caregiver, and she is able
2 to remain at home because of Mr. Olins' care while she is
3 receiving treatments for cancer.

4 THE COURT: Can I interrupt and just ask you a
5 question on that score? I noticed in the submissions, or it
6 might have been in the presentence report, that Mr. Olins'
7 sister lives in West Hartford as well.

8 MR. CECUTTI: She does.

9 THE COURT: What, if any, role does she play with
10 respect to her mother and why would she not be available?

11 MR. CECUTTI: It's obviously a fair question, your
12 Honor. She is simply not available. She does live in the West
13 Hartford area. She has numerous other responsibilities, and
14 since -- well, prior to 2012, but especially when Mr. Olins'
15 mother became very sick, an e-mail that your Honor heard
16 earlier today, Mr. Olins became his mother's sole caregiver,
17 and he has been doing that since 2012. He takes her to places,
18 he helps prepare meals, he cares for her, brings her to social
19 events, and the bottom line here is that, but for his care, she
20 wouldn't be able to live at home. And that's an important
21 consideration obviously today at sentencing.

22 Now, in terms of the nature of the offense, I don't
23 intend to speak at length about this. We have spent a day and
24 a half and more discussing the nature of the offense and
25 Mr. Olins' conduct. But I wanted to raise a few things that I

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1 think are important for your Honor's consideration.

2 I think what's important is, in 2011/2012, the picture
3 here is that Mr. Olins has a loan with AB&T, he has an SEC
4 disgorgement judgment, he is caring for his mom, not nearly as
5 intensely as he has been doing for the past four years or so,
6 but he is caring for her, he is going through financial
7 struggles, as your Honor has acknowledged, and he is also
8 dealing with his own medical conditions, and that is the
9 picture that we find ourselves in, he finds himself in at the
10 time that he committed these offenses.

11 He had no intention, it's our respectful view, he had
12 no intention from the outset to deceive anybody. In fact, I
13 think the testimony from Mr. Rusco supports that. In fact,
14 Mr. Olins, he began -- he was paying back the loan to AB&T, he
15 was working closely with Mr. Rusco to help pay back that loan.
16 There was testimony from Mr. Rusco that Mr. Olins had
17 introduced many potential purchasers both before and after the
18 receivership. Mr. Olins was encouraging higher prices in an
19 effort to try and help pay back that loan. And ultimately,
20 when the receivership order had been signed, it became more
21 difficult for the sales of the antiques to occur and for those
22 sales to occur at good prices or high prices, fair prices.

23 And as a result, but nonetheless, Mr. Olins was still
24 actively working with Mr. Rusco to try and pay down the loan
25 and, as of -- actually, as of a few months ago, in fact, the

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1 principal on the AB&T loan is zero. And I think that's an
2 important point, because I think it reflects positively on
3 Mr. Olins, that this is somebody who wasn't trying to negate
4 responsibility. He was trying to make a good faith effort to
5 repay back AB&T.

6 With respect --

7 THE COURT: What is the balance on the loan? I know
8 you have artfully said the principal is zero, and there was
9 some testimony that even the interest due at the time of the
10 receivership order, that that has been paid off, but what is
11 the current balance?

12 MR. CECUTTI: In terms of interest, I don't have that
13 exact figure; but, from my understanding, the order of priority
14 is the AB&T principal, which is now zero, followed by the SEC
15 disgorgement judgment, followed by -- and I think this is up to
16 Judge Cote, in terms of the interest on the AB&T loan. So the
17 AB&T principal has been completely paid off, and that's been in
18 large part due to Mr. Olins' efforts.

19 In terms of the SEC disgorgement judgment, your Honor
20 heard testimony, I believe, from Mr. Rusco that there were
21 efforts made by Mr. Olins and Mr. Rusco to try and settle,
22 resolve that SEC matter in an amount of I believe 1 to \$1.5
23 million, and ultimately the SEC rejected that. But that's an
24 attempt by Mr. Olins and Mr. Rusco to try and resolve that
25 issue as well.

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1 Your Honor may recall also that there were efforts by
2 both AB&T and Mr. Olins to try and make payments to the SEC,
3 which did occur in June of 2010, and before the disgorgement
4 order in February of 2011. There were payments made to the
5 SEC, and those were efforts made by Mr. Olins.

6 The other thing that your Honor may recall is, I know
7 there are multiple exhibit numbers or letters, but Exhibit B to
8 our defense submission was a loan review report from April of
9 2011, which indicated that the repayment was going well, in
10 essence, and that's another indication that Mr. Olins was
11 making a good-faith effort to try and be responsible and pay
12 down the loan.

13 THE COURT: Let me ask you, how do you square that
14 with the testimony of Mr. Rusco? I think it was with respect
15 to the two items on the asset list that, unbeknownst to him,
16 were no longer in Mr. Olins' possession, the armchair and the
17 carpet or the rug.

18 MR. CECUTTI: I believe the carpet ultimately --

19 (Pause)

20 MR. CECUTTI: I believe that the carpet was ultimately
21 used to purchase a chandelier, which ultimately became a
22 receivership asset, and I do recall Mr. Rusco indicating that
23 Mr. Olins was embarrassed and apologetic about that as well.

24 But ultimately those weren't the only two items.
25 There were many items, and there was a high loan amount that

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1 needed to be paid down and there was a high disgorgement
2 judgment that also needed to be paid, and Mr. Olins was making
3 a big effort to try and make that happen. And I think there
4 are many e-mails that were submitted that reflect those efforts
5 and the fact that Mr. Rusco was willing to enter an agreement
6 with the SEC, was encouraging the SEC to enter into a
7 resolution with Mr. Olins also reflects that.

8 Mr. Olins' efforts to try and repay down the loan with
9 AB&T and the SEC and the financial state that he was in is also
10 reflected in the fact that he couldn't finance an appeal, and
11 that was something that Mr. DeVita had elicited from Mr. Rusco.
12 And I think that is important because it captures the financial
13 condition of Mr. Olins during that time period. He was
14 receiving, I think, more than competent legal advice from many
15 prestigious white collar criminal defense law firms indicating
16 that he had a meritorious appeal, and he simply couldn't
17 finance it. And, again, I think that that gives a picture to
18 the court of what Mr. Olins' financial conditions was during
19 that time period.

20 And your Honor has acknowledged, has indicated that
21 certainly Mr. Olins was struggling during this time period. He
22 wasn't leading a lavish lifestyle. I think what's also
23 important here and, again, we are not here today to excuse
24 conduct or defend Mr. Olins' actions, but I think it is worth
25 noting that the appointment of a receiver was driven by the

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1 SEC. That wasn't something that Mr. Olins was encouraging. It
2 wasn't something that Mr. Rusco or AB&T was encouraging,
3 either. And as a result of the appointment of a receiver, in
4 our view, it stunted the ability for both AB&T and the SEC to
5 be paid.

6 THE COURT: I hear your point. I read that in your
7 submission. That may even be right. But it is water under the
8 bridge at this point. It was an issue for Judge Cote to
9 consider. She did what she did, and Mr. Olins was required to
10 live with that and we are here because he didn't. I don't find
11 that a particularly compelling argument for mitigation here, so
12 move to the next point.

13 MR. CECUTTI: The next point is, I think, what also --
14 and, again, we are just trying to provide context. I think
15 what is also important here are the misrepresentations made by
16 Mr. Neville related to various items in Mr. Olins' collection
17 and how that contributed to the exacerbation of Mr. Olins'
18 negative financial conditions and also slowed the repayment
19 back to AB&T and really limited his ability to repay back the
20 SEC, and I think that is -- had it not been for those actions,
21 I think we would be in a different story with respect to AB&T
22 and with respect to the SEC.

23 Ultimately, your Honor, I think a question is what did
24 Mr. Olins receive amongst all of this, and I think it is clear
25 what he didn't receive. He didn't receive the wall brackets.

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1 There is no apartment in Spain. It was a pipe dream. It was
2 something that he was exploring, something that he wanted, but
3 never materialized or came close to materializing. And there
4 is nothing to indicate that he was living a lavish lifestyle or
5 had the ability to do so.

6 Turning to the history and characteristics of
7 Mr. Olins, we had submitted, again, a number of letters
8 describing who he is. And I think that Judge Rakoff has a
9 significant quote that we quoted in our submission from *United*
10 *States v. Adelson* and I think it is worth repeating. It says,
11 "If ever a man is to receive credit for the good he has done
12 and his immediate misconduct assessed in the context of his
13 overall life hitherto, it should be at the moment of his
14 sentencing, when his very future hangs in the balance."

15 This elementary principle of weighing the good with
16 the bad was plainly part of what Congress had in mind when it
17 directed courts to consider as a necessary sentencing factor
18 the history and characteristics of the defendant.

19 We submit that the letters that were part of our
20 submission reveal a tremendous amount of good in Mr. Olins that
21 your Honor should credit, and I will highlight a few of the
22 comments.

23 One letter from Mr. Lawrence Madison, who is the
24 former chairman of the board at Spatia Light --

25 THE COURT: I am going to cut you off only because it

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1 is after 5:00. I have read all these submissions. I have read
2 every one of the letters. I got it.

3 If there is something that is not in your submission,
4 why don't you focus on that.

5 MR. CECUTTI: That's fine.

6 THE COURT: Just given the time, I would rather you
7 not go over things that I have already reviewed, because I
8 assure you that I have taken them into consideration.

9 MR. CECUTTI: That's fine.

10 So, again, your Honor, we ask that all of the things
11 that the writers did submit your Honor take into consideration.

12 This is a man who is generous. He is sacrificial. He
13 has relationships with people who have stood by him for
14 decades. In fact, many of those people were here today and
15 some of them are still here today, and they took time out of
16 their lives, their responsibilities, to be here yesterday all
17 day and to be here today because this is their friend, Robert
18 Olins. And Robert Olins is somebody who has given to them, has
19 sacrificed for them, has served them, has been with them during
20 the darkest times of their lives.

21 I will point out one individual, and his name is Kenny
22 Schneider. And Kenny Schneider is a lawyer, and Kenny
23 Schneider clerked for a criminal court judge in this city. He
24 worked for Proskauer. He advocated for clients. And he is now
25 going through some of the darkest times in his life and, as he

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1 wrote in his letter, the only man that is standing next to him
2 is Robert Olins, and I think that speaks volumes about who
3 Robert Olins is as a person. He is more than the offenses that
4 he pled guilty to and is convicted of and will be sentenced on.

5 I wanted to turn briefly to the purposes of
6 sentencing, and I am not going to remind the court about the
7 purposes, but the government made mention of the fact that
8 Mr. Olins needs to be deterred. I will say this: Mr. Olins,
9 since his arrest in this case, and in fact since the SEC
10 litigation began in 2007, has gone through a tremendous amount
11 in his life and, in fact, in many ways has been punished. He
12 experiences daily stress and anxiety and the worsening of his
13 medical conditions. He has lost close friends, professional
14 contacts, and business associates. He has experienced deep
15 shame and embarrassment.

16 At the end of the day, your Honor, he is a man who is
17 60 years old who has nothing. He is the sole caregiver of his
18 elderly mother who has cancer. He doesn't have any bank
19 accounts. He doesn't have a car. He doesn't have any
20 significant material possessions. He has nothing. And the
21 only thing left that he has right now is his own self-respect
22 and dignity. Everything has been taken away from him. And he
23 very much wants to be able to repay the money that is owed, to
24 repay back his debts. That's his desire. That's what he wants
25 to do. And the only thing left this afternoon is his own

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1 self-respect and dignity. That's it.

2 THE COURT: All right. Why don't you begin to finish
3 up, please.

4 MR. CECUTTI: One of the express purposes of
5 sentencing is to provide needed medical care in the most
6 effective manner, and your Honor raised a question with
7 Ms. Griswold concerning whether Mr. Olins can receive
8 appropriate medication in a BOP facility.

9 Now, I have done some of the research. I have
10 contacted the BOP by phone. I have read information online.
11 They do not provide diazepam. Diazepam is a medication
12 commonly known as Valium that is prescribed to people who
13 suffer from extreme claustrophobia, and that's what Mr. Olins
14 suffers from, and we provided medical documentation verifying
15 that. Mr. Olins is being treated by three different doctors
16 and is prescribed a regimen of medication, and the information
17 I received from the BOP is that diazepam is not a drug that
18 they give to inmates.

19 Percocet is another medication Mr. Olins receives,
20 which I do not believe the BOP gives to inmates either. Now, I
21 haven't had an express discussion about that medication, but
22 the nature of that medication would suggest to me that they
23 would not provide that to inmates, much like the reasons for
24 why they don't provide diazepam or Valium. But he has serious
25 medical conditions. I'm not going to belabor the point with

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1 his mother. She also has serious medical conditions. I think
2 those factors should obviously be considered by your Honor in
3 imposing an appropriate sentence.

4 So, at the end of the day, your Honor, we simply ask,
5 because we can't ask for a sentence below the guidelines, your
6 Honor to take into consideration everything that we submitted
7 as part of our written submissions and impose a sentence that
8 is sufficient and not greater than necessary for this
9 individual in this case.

10 THE COURT: And one last question. Any objection to
11 the proposed order of restitution in light of my findings?

12 MR. CECUTTI: No, your Honor.

13 THE COURT: All right. Thank you.

14 Mr. Olins, is there anything that you wish to say
15 before I sentence you.

16 THE DEFENDANT: I just would like to say that I felt
17 like I took responsibility for what I pled guilty for. It has
18 been an awful X number of years, awful. It's embarrassing.

19 And with respect to my sister, in taking care of my
20 mother, she has a troubled child and she has a full-time job,
21 and she can't take my mother to doctors appointments or prepare
22 her meals or -- I mean, she just can't do it. She is a good
23 daughter, but she is not capable of doing it.

24 And I am embarrassed by, at the age of 60, being in
25 the position I am in. I never thought in a million years that

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1 I would be in this position.

2 I apologize to you and I apologize to my mother for
3 putting her and in perhaps a terrible position, but I have
4 never -- not "but," but I have never been in a situation like
5 this and just certainly never thought I would be.

6 THE COURT: All right. Thank you.

7 Counsel, is there any reason why sentence should not
8 be imposed at this time?

9 MS. GRISWOLD: No, your Honor.

10 MR. CECUTTI: No, your Honor.

11 THE COURT: In imposing sentence, I am required to
12 consider the factors set forth in Title 18 United States Code §
13 3553(a). In the interests of time I don't think I will recite
14 them, but suffice it to say that I have considered all of them,
15 Subsections 1 through 7, if I remember correctly, including the
16 guidelines range, which I have found, for the reasons I stated
17 earlier, to be 46 to 57 months in prison. Ultimately I am
18 required to impose a sentence that is sufficient but no greater
19 than necessary to comply with the purposes of sentencing that I
20 mentioned a moment ago.

21 Sentencing is, as I have said before, I think
22 indisputably the hardest part of any judge's job and part of it
23 is to find the right balance between punishing someone for
24 their conduct and recognizing, as Judge Rakoff did in the quote
25 that Mr. Cecutti read, the totality of a person's being.

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1 In this case I have no question that a jail sentence
2 is warranted. I do think that the pattern of deception and
3 misconduct that I described earlier is one that warrants
4 punishment; that it is needed to reflect the seriousness of the
5 offense; it is needed because of what I see as a pattern of
6 conduct on Mr. Olins' part of thinking that he can get away
7 with things and not comply with the lawful orders of the court
8 and essentially try to continue living his life and keep the
9 balls in the air, some of which were not particularly good
10 ones, in a way that would ultimately redound to his advantage.

11 I also am troubled by what I see as the denial of his
12 responsibility and what I think is a clear effort to shift
13 blame to Mr. Neville. Mr. Neville is no angel. He has pled
14 guilty to serious crimes of his own and has other warts, if you
15 will, on his past and his day will come. But, the bottom line
16 is, I don't think that he was single-handedly responsible for
17 the deception and fraud in the way that Mr. Olins suggested in
18 his sentencing submission and tried to suggest in the last day
19 and a half. For those reasons, I certainly think a jail
20 sentence is warranted.

21 Having said that, given the totality of the
22 circumstances, I am not going to impose a guidelines sentence.
23 I think that the defendant's medical condition, his role with
24 respect to his mother -- and by that I mean just the degree to
25 which he has gone above and beyond a son's responsibilities in

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1 the last few years of being her sole caregiver, not as much the
2 fact that she needs to continue having his care. It pains me
3 to send someone to prison in those circumstances, but
4 ultimately I think Mr. Olins had to understand when he did
5 these things that he was jeopardizing her in that way, and I am
6 hoping that alternative arrangements can and will be made for
7 her either with Mr. Olins' sister or otherwise.

8 Third are the letters that counsel submitted. I would
9 highlight two. One is Mr. Schneider's, and Mr. Schneider's
10 presence here speaks volumes as well. Second is the letter
11 from Mr. Terhune. Both of those I thought were quite notable
12 in indicating a degree of empathy and generosity to those in
13 Mr. Olins' life and suggested somebody who is not
14 single-handedly selfish or craven in the way that his conduct
15 here might otherwise have suggested, but suggested that he is
16 someone who looks out for others, even though he doesn't
17 necessarily need to, and others who are down on their luck.

18 Lastly, I would cite the fact that he has paid down
19 the principal on the AB&T loan. Obviously, again, that doesn't
20 necessarily reflect the full amount owed to AB&T, let alone the
21 SEC judgment, but I do think that that is a reflection of his
22 efforts to make good on his debts and put this behind him.

23 And then, finally, I would say what I have learned
24 over the last day and a half of this hearing is that this is a
25 world in which I think lots of people are playing fast and

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1 loose with things, and I think it's quite clear, between the
2 use of the store credit and the valuations of items that are
3 exchanged in these transactions that, quite frankly, people are
4 cutting corners all over the place. I'm not suggesting that
5 that excuses Mr. Olins' conduct, but I do think, apropos of
6 what Mr. Cecutti said, it needs to be viewed in context. I
7 think the evidence has indicated that the troubling world in
8 which people are manipulating and can sort of manipulate the
9 details of transactions to suit their purposes and advantage
10 particular parties to transactions and the like and it is sort
11 of in that context that Mr. Olins engaged in the pattern of
12 conduct that I have found troubling. Again, that by no means
13 excuses it, but it does put it in context.

14 For all those reasons, while I do think that a
15 sentence of jail time is necessary here, for the reasons I
16 said, I do not think that a guidelines sentence is warranted.
17 Indeed, I am inclined to vary below even what the guidelines
18 calculation was in the parties' agreement before the acceptance
19 of responsibility credit was taken out of the picture.

20 So, with that, I will state the sentence that I intend
21 to impose and would ask you, Mr. Olins, to please rise.

22 Mr. Olins, it is the judgment of this court that you
23 are remanded to the custody of the Bureau of Prisons for a
24 period of 24 months -- that is two years -- on each count,
25 Counts One and Five, I believe, to be served concurrently, to

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1 be followed by a period of two years of supervised release.

2 During your term of supervised release, you will be
3 subject to the following mandatory conditions:

4 First, you shall not commit another federal, state, or
5 local crime;

6 Second, you shall not illegally possess a controlled
7 substance;

8 Third, you shall not possess a firearm or destructive
9 device;

10 Fourth, you shall refrain from any unlawful use of a
11 controlled substance and submit to one drug test within 15 days
12 of your release on supervised release and at least two periodic
13 drug tests thereafter as determined by probation; and,

14 Fifth, you shall cooperate in the collection of DNA as
15 directed by probation.

16 In addition, these standard conditions of supervised
17 release shall apply, and you must also meet the following
18 special conditions:

19 First, you shall submit your person, residence, place
20 of business, vehicle, or any property or electronic device
21 under your control to a search on the basis that the probation
22 officer has a reasonable belief that contraband or evidence of
23 a violation of the terms of supervised release may be found.
24 That search must be conducted at a reasonable time and in a
25 reasonable manner. Failure to submit to a search may be

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1 grounds for revocation. And you shall advise any other
2 residents that the premises may be subject to search pursuant
3 to that condition.

4 You shall provide the probation officer with access to
5 any requested financial information unless you have satisfied
6 your financial obligations which I will mention in a moment.

7 You shall not incur any new credit charges or open
8 additional lines of credit without the approval of the
9 probation officer unless you have satisfied your financial
10 obligations.

11 You are to report to the nearest probation office
12 within 72 hours of your release from custody and you are to be
13 supervised in the district of your residence.

14 I am not going to impose a fine because I do not
15 believe that you have the ability to pay a fine, particularly
16 in light of the restitution order and other debts that you owe.

17 On the subject of restitution, it is further the
18 judgment of this court that you pay restitution in the amount
19 of \$657,000, specifically, you will make restitution, in
20 accordance with Title 18 United States Code § 3663(a), payable
21 to the Clerk of the United States District Court for
22 disbursement to AB&T. Information concerning the bank is set
23 forth in the order that I will sign. The requirement of
24 interest under Section 3664 will be waived in light of your
25 financial circumstances as set forth in the report.

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1 If you are engaged in a BOP non-UNICOR work program,
2 you shall pay \$25 per quarter toward the criminal financial
3 penalties. If you participate in BOP's UNICOR program as a
4 grade one through four, however, you shall pay 50 percent of
5 your monthly UNICOR earnings toward the criminal financial
6 penalties consistent with BOP regulations at 28 CFR Section
7 545.11. Excuse. Me that's not applicable here. There is only
8 one victim.

9 The restitution shall be paid in monthly installments
10 of 15 percent of gross monthly income over a period of
11 supervision to commence 30 days after your release from
12 custody, and you shall notify the court and the probation
13 department of any material change in your economic
14 circumstances that might affect your ability to pay
15 restitution.

16 I am also imposing the mandatory special assessment of
17 \$100 per count for a total of \$200, which shall be due and
18 payable immediately; and, consistent with the consent
19 preliminary order of forfeiture that I signed and entered on
20 June 14 in connection with your plea, you are ordered to
21 forfeit to the United States \$160,000 in United States currency
22 and the specific property referenced in that order, namely, all
23 right, title and interest in the wall brackets that we have
24 heard so much about.

25 Has does either counsel know of any legal reason why

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1 the sentence should not be imposed as stated?

2 MS. GRISWOLD: No, your Honor.

3 MR. CECUTTI: No, your Honor.

4 MR. DeVITA: No, your Honor.

5 THE COURT: Sentence as stated is imposed. I find
6 that the sentence is sufficient but no greater than necessary
7 to satisfy the sentencing purposes set forth in Section
8 3553(a)(2), including the need to promote respect for the law,
9 to provide just punishment for the offense, to afford adequate
10 deterrence, hopefully that's not necessary as to Mr. Olins, but
11 as to him and certainly as to others, and to protect the public
12 from further crimes of the defendant of which I hope there will
13 be none.

14 Is there any objection to allowing the defendant to
15 voluntarily surrender?

16 MS. GRISWOLD: No objection.

17 THE COURT: Is there a request with respect to
18 surrender date? I don't know if the circumstances with respect
19 to Mr. Olins' mother warrant --

20 MR. DeVITA: Your Honor, Mr. Olins is required to
21 appear in California in court on January 30 and 31 in
22 connection with the disgorgement proceeding out there.
23 Sometime after that would be -- and that should give the Bureau
24 of Prisons adequate time to make a designation. We would ask
25 that your Honor recommend a designation somewhere close to his

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1 home in Connecticut.

2 THE COURT: Very good. I will certainly do that. I
3 will recommend to the Bureau of Prisons that he be designated
4 to facility as close to West Hartford as possible to facilitate
5 the maintenance of ties with his family and in the hopes that
6 his mother might be able to visit him in custody.

7 I will order the defendant to surrender for service at
8 the institution designated by the Bureau of Prisons before 2
9 p.m. on February 17 or as notified by the probation or Pretrial
10 Services Department.

11 Mr. Olins you should understand that your conditions
12 of release will continue up until the time that you are to
13 surrender to begin your sentence. If you fail to report for
14 your sentence, you may be charged with another offense and
15 subject to punishment above and beyond the punishment that you
16 have received today.

17 Do you understand that?

18 THE DEFENDANT: I do.

19 MR. DeVITA: Your Honor, I'm not sure about the bail
20 limits of Mr. Olins' release, but I assume he has the court's
21 permission to travel to California to appear in court in
22 connection with the SEC case.

23 THE COURT: Any objection, Ms. Griswold?

24 MS. GRISWOLD: No objection. The current travel
25 restrictions are Southern and Eastern District of New York and

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1 District of Connecticut. But if he is making an application
2 right now to be able to go to California at the end of January
3 for the SEC proceeding, we don't have an objection.

4 THE COURT: I will grant that application as long as
5 Mr. Olins advises his, I am assuming Pretrial Services is still
6 in the picture at this point, but whether Pretrial Services or
7 probation, he should provide the details with respect to his
8 travel to them and then he may go to attend that proceeding.

9 I think there are several open counts to be dismissed,
10 is that correct, Ms. Griswold?

11 MS. GRISWOLD: Yes, your Honor, Counts Two, Three, and
12 Four. The government would move at this time that they be
13 dismissed.

14 THE COURT: They are so dismissed.

15 Mr. Olins to the extent that you have not given up
16 your right to appeal through your guilty plea and the plea
17 agreement that you entered into in connection with your plea,
18 you have the right to appeal. Any notice of appeal must be
19 filed within 14 days of entry of the judgment of conviction;
20 and if you cannot afford to pay the costs of an appeal, you may
21 apply for leave to appeal *in forma pauperis*.

22 Is there anything further from the government?

23 MS. GRISWOLD: No, your Honor.

24 THE COURT: From the defense?

25 MR. CECUTTI: No, your Honor.

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1 MR. DeVITA: No, your Honor.

2 THE COURT: Let me say, first of all, this has been an
3 unusual last two days in the sense of the amount of time that
4 we devoted to a case where there was no dispute about the
5 guidelines, but I obviously felt that it was important for my
6 understanding of what the defendant's conduct was and wasn't
7 and whether he accepted responsibility.

8 I do want to thank counsel I thought, even if it went
9 a little longer than I would have liked, both sides did a
10 really terrific job during the hearing, and it was certainly
11 helpful to me in exercising my discretion.

12 Mr. Olins, I want to say to you that I imagine that
13 you and your family and friends would have liked to avoid the
14 sentence that I imposed altogether, but for the reasons that I
15 stated, I felt that I could not do that. I hope that you have
16 gotten the message and understand that the kind of conduct that
17 landed you here is not acceptable and that you put it behind
18 you; that when you do get out, I hope that your mother is able
19 to greet you at that time and that you are able to care for her
20 and be a part of her life in a way that you don't have to come
21 back here ever again.

22 I guess the bottom line is, I wish you and your family
23 the best of luck and wish everybody happy holidays and we are
24 adjourned. Thank you.

25 COUNSEL: Thank you, your Honor.

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